S. HRG. 99-935

# SETTLEMENT OF CERTAIN LAND AND WATER RIGHTS CLAIMS OF THE PAPAGO TRIBE OF ARIZONA

## HEARING

BEFORE THE

## SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

**S. 2105**

TO PROVIDE FOR THE SETTLEMENT OF CERTAIN CLAIMS OF THE PAPAGO TRIBE ARISING FROM THE OPERATION OF PAINTED ROCK DAM, AND FOR OTHER PURPOSES

**S. 2106**

TO PROVIDE FOR THE SETTLEMENT OF CERTAIN WATER RIGHTS CLAIMS OF THE PAPAGO TRIBE OF ARIZONA AND FOR OTHER PURPOSES

**S. 2107**

TO PROVIDE FOR THE SETTLEMENT OF CERTAIN CLAIMS OF THE PAPAGO TRIBE OF ARIZONA ARISING FROM THE CONSTRUCTION OF TAT MOMOLIKOT DAM, AND FOR OTHER PURPOSES

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JULY 23, 1986
WASHINGTON, DC

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S411-9

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# SETTLEMENT OF CERTAIN LAND AND WATER RIGHTS CLAIMS OF THE PAPAGO TRIBE OF ARIZONA

WEDNESDAY, JULY 23, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
*Washington, DC.*

The committee met, pursuant to recess, in room 385, Russell Senate Office Building, Hon. Dennis DeConcini (acting chairman of the committee) presiding.

Senator DECONCINI (acting chairman). The committee will now hold hearings on S. 2105, S. 2106, and S. 2107. Senator Goldwater was going to chair these hearings but I'm going to substitute for him.

I'm pleased that the select committee has scheduled this hearing today on these bills which are offered by Senator Goldwater, co-sponsored by myself, to settle outstanding water claims of the Papago Indian Tribe against the Federal Government.

I have been kicking around with this process for a number of years, and I think it's high time that we address S. 2105, the Gila Bend bill; S. 2106, the Chuichu bill; and S. 2107, the Tat Momolikot bill. For the sake of time, I will go into a short detail of the bill for the record and I will ask that the balance of my statement be put into the record at this time.

[The prepared statement of Senator DeConcini, to be supplied, appears in the appendix.

[The test of S. 2105, S. 2106, and S. 2107 follows:]

II

99TH CONGRESS
2D SESSION

# S. 2105

To provide for the settlement of certain claims of the Papago Tribe arising from the operation of Painted Rock Dam, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 26 (legislative day, FEBRUARY 24), 1986

Mr. GOLDWATER (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

To provide for the settlement of certain claims of the Papago Tribe arising from the operation of Painted Rock Dam, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Papago-Gila Bend Settlement Act".

**SEC. 2. FINDINGS.**

For the purpose of this Act, the Congress finds that—

(1) it is the policy of the United States, wherever possible, to settle Indian land and water claims

through negotiation rather than costly and lengthy litigation;

(2) Painted Rock Dam, constructed by the Corps of Engineers, Department of the Army, to provide flood protection to the Gila reclamation project and the city of Yuma, Arizona, has, since its completion in 1960, caused frequent flooding of the Gila Bend Indian Reservation of the Papago Tribe;

(3) the land and water rights claims of the Papago Tribe with respect to the Gila Bend Indian Reservation are the subject of prospective lawsuits against the United States;

(4) Congress, in section 308 of the Act of October 12, 1982 (97 Stat. 1274; Public Law 97-293), authorized and directed the Secretary of the Interior to determine which lands, if any, within the Gila Bend Indian Reservation have been rendered unsuitable for agriculture by reason of the operation of Painted Rock Dam, Arizona;

(5) that study has determined that the entire reservation—comprising ten thousand two hundred and ninety-seven acres of land held by the United States in trust for the Tribe, including five thousand nine hundred and sixty-two acres of agricultural land—has been

rendered unsuitable for economic use by reason of the operation of Painted Rock Dam;

(6) this Act provides for the final settlement of Papago claims against the United States respecting the Gila Bend Indian Reservation by—

(A) authorizing the Tribe to assign to the United States all right, title, and interest to nine thousand eight hundred and eighty acres of land within the Reservation, including the water rights attached to this land, as a consideration for fair and equitable compensation;

(B) authorizing the Secretary to hold in trust replacement lands which the Tribe may acquire, subject to certain limitations; and

(C) promoting the economic development of the Tribe.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(2) The term "Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(3) The term "Secretary" means the Secretary of the Interior.

(5) The term "San Lucy District" means the political subdivision of the Papago Tribe exercising governmental functions on the Gila Bend Indian Reservation.

**SEC. 4. ASSIGNMENT OF TRIBAL LANDS.**

(a) ASSIGNMENT.—If the Tribe assigns to the United States all right, title, and interest of the Tribe in nine thousand eight hundred and eighty acres of land within the Gila Bend Indian Reservation, the Secretary of the Treasury shall pay to the authorized governing body of the Tribe the sum of $30,000,000 together with interest accruing from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Federal obligations of comparable maturity to be used for the benefit of the San Lucy District. The Secretary shall accept any assignment under this subsection.

(b) CERTAIN RIGHTS RETAINED.—The provisions of subsection (a) shall not apply to hunting, fishing, and gathering rights of the Tribe.

(c) AUTHORIZATION.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

**SEC. 5. USE OF SETTLEMENT FUNDS.**

(a) INVESTMENT.—The Tribe shall invest sums received under section 4 in interest bearing deposits and securities until expended. The authorized governing body of the Tribe may spend the principal and the interest and dividends accruing on such sum held and invested pursuant to subsection (a) on behalf of the San Lucy District for land and water rights acquisition, economic and community development, and relocation costs. Income may be used for planning and administrative purposes.

(b) ACQUISITION OF LANDS.—The Tribe is authorized to acquire by purchase private lands in an amount not to exceed, in the aggregate, nine thousand eight hundred and eighty acres.

(c) TRUST STATUS.—The Secretary shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (b) which meets the requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian reservation for all purposes. Land does not meet the requirements of this subsection if it is outside the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts. At least one of such areas shall be contiguous to San Lucy Village. The Secretary may waive the re-

quirement set forth in the preceding sentence if he determines that additional areas are appropriate.

(d) WASTE MANAGEMENT.—The Secretary shall establish a water management plan for any land which is held in trust under subsection (c) which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

**SEC. 6. REAL PROPERTY TAXES.**

(a) PAYMENTS.—With respect to any private land acquired by the Tribe under section 5 and held in trust by the Secretary, the Secretary shall make payments to the State of Arizona and its political subdivisions in lieu of real property taxes.

(b) TRANSFER OF OTHER LANDS.—The Secretary is authorized to enter into agreements with the State of Arizona and its political subdivisions pursuant to which the Secretary may satisfy the obligation under subsection (a), in whole or in part, through the transfer of public land under his jurisdiction or interests therein, including land within the Gila Bend Indian Reservation or interests therein.

**SEC. 7. WATER DELIVERY.**

If the Tribe acquires rights to the use of any water by purchase, rental, or exchange within the State of Arizona, the Secretary, at the request of the Tribe, shall deliver such water, at no cost to the United States, through the main

project works of the Central Arizona Project to any land acquired under section 5(c), if, in the judgment of the Secretary, sufficient canal capacity exists to convey such water. The rate charged to the Tribe for water delivery shall be the same as that charged by the Central Arizona Water Conservation District pursuant to contracts entered into pursuant to the Colorado River Basin Project Act (43 U.S.C. 1521, et seq.). Nothing in this section shall be deemed to obligate the Secretary to construct any water-delivery system.

**SEC. 8. WAIVER AND RELEASE OF CLAIMS OF PAPAGO TRIBE.**

(a) WAIVER AND RELEASE.—The Secretary shall be required to carry out the obligations of this Act only if within one year after the enactment of this Act the Papago Tribe executes a waiver and release of any and all claims for injuries to land or water rights (including rights to both surface and ground water) with respect to the lands of the Gila Bend Indian Reservation from time immemorial to the date of the execution by the Tribe of such a waiver, which the Tribe has against the United States.

(b) CLAIMS UNDER THIS ACT.—Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this Act.

(c) EFFECTIVE DATE.—The assignment referred to in section 4 and the waiver and release referred to in this section shall not take effect until such time as the full amount

authorized to be appropriated in section 4 has been appropriated by the Congress and paid to the Tribe.

(d) EFFECT OF SETTLEMENT.—The settlement provided in this Act shall be deemed fully to satisfy any and all claims of land or water rights (including rights in both surface and ground water) of the Papago Tribe in the Gila Bend Indian Reservation.

SEC. 9. FACILITIES FOR SAN LUCY VILLAGE.

The Secretary, in consultation with the Director of the Indian Health Service, shall design, construct, operate, maintain, and replace each of the following:

(1) A water treatment facility to provide domestic water to San Lucy village.

(2) Sewage disposal facilities to serve said village.

The facility referred to in paragraph (1) shall be provided as soon as possible but not later than two years after the date of enactment of this Act.

SEC. 10. COMPLIANCE WITH BUDGET ACT.

No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1986.

II

99TH CONGRESS
2D SESSION

# S. 2106

To provide for the settlement of certain water rights claims of the Papago Tribe of Arizona and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26 (legislative day, FEBRUARY 24), 1986

Mr. GOLDWATER (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

To provide for the settlement of certain water rights claims of the Papago Tribe of Arizona and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. This Act may be cited as the "Papago-Chuichu Settlement Act".

SEC. 2. The Congress finds that—

(1) it is the policy of the United States to settle, wherever possible, the water rights claims of Indian tribes without costly and lengthy litigation;

(2) water rights claims of the Papago Tribe with respect to the Chuichu area of the Sif Oidak District of

the Sells Papago Reservation are the subject of prospective lawsuits against the United States;

(3) over the past three decades, the tribe has been forced to abandon its irrigated agricultural enterprises in the Chuichu area as well as joint tribal-Federal plans to develop eleven thousand acres of land in that area as a result of the decline in the water table;

(4) it is the duty of the United States to protect the water resources of the tribe or mitigate the impacts of its failure to do so;

(5) in 1980, the Secretary of the Interior, in partial recognition of the equitable claims of the tribe, made an Indian allocation of eight thousand acre-feet of Central Arizona Project water to the Chuichu area pursuant to the authority contained in the Colorado River Basin Project Act of 1968 (82 Stat. 887; 43 U.S.C. 1521, et seq.);

(6) it is in the long-term interest of the United States and the Papago Tribe to settle the water rights claims of the tribe with respect to the Chuichu area; and

(7) the settlement contained in this Act will constitute a fair, equitable, and final settlement of those claims.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) the term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot;

(2) the term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.);

(3) the term "December 11, 1980, contract" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(4) the term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476);

(5) the term "Secretary" means the Secretary of the Interior;

WATER DELIVERIES

SEC. 4. (a) In carrying out his authority to allocate water from the Central Arizona Project under the Reclamation Act of 1902 (43 U.S.C. 391) and the Colorado River Basin Project Act (43 U.S.C. 1501), the Secretary shall offer to contract with the tribe to deliver additional water to the Chuichu area of the Sells Papago Reservation. The additional water delivered pursuant to such contract shall be 3.0 per centum of the water developed by the Central Arizona Project, not to exceed twelve thousand acre-feet annually, which is not allocated for either of the following:

(1) Indian communities for irrigation or maintaining tribal homelands; or

(2) municipal and industrial use.

During years of water supply shortages the water delivered pursuant to a contract under this section shall have the same priority for reduction as water allocated for non-Indian agricultural use. Water delivered pursuant to a contract under this subsection shall be in addition to water the Secretary is obligated to deliver to the Chuichu area of the Sells Papago Reservation pursuant to the December 11, 1980 contract.

(b) The Secretary shall deliver water pursuant to a contract under subsection (a) and the December 11, 1980, contract at no cost to the tribe.

(c) If the tribe acquires any water by purchase, rental, or exchange within the State of Arizona, the Secretary, at the request of the tribe, shall deliver such water through the main project works of the Central Arizona Project to the irrigation system referred to in section 5(a) to the extent that such water is needed by the tribe to replace any of the water supplies the Secretary is unable to deliver pursuant to a contract under subsection (a) and the December 11, 1980, contract. The capacity of said main project work shall be deemed sufficient to convey such replacement water. The rate charged to the tribe for water delivered pursuant to this subsection shall be the same as that charged by the Central Ari-

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zona Water Conservation District pursuant to contracts entered into pursuant to the Colorado River Basin Project Act (43 U.S.C. 1–521, et seq.).

(d) As soon as possible, but not later than two years after the date of enactment of this Act, the Secretary, in consultation with the Director of the Indian Health Service, shall plan, design, construct, operate, maintain, and replace facilities to furnish domestic water to the villages of Chuichu, East Chuichu, and White Horse Pass.

DISTRIBUTION OF WATER

SEC. 5. (a) The Secretary, acting through the Bureau of Reclamation, shall plan, design, and construct an irrigation system within the Chuichu area of the Sif Oidak District of the Sells Papago Reservation, including flood-protection measures and such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution of twelve thousand acre-feet of water, at no cost to the tribe. The irrigation system the Secretary is obligated to plan, design, and construct under this subsection shall be in addition to the irrigation system the Secretary is obligated to design and construct pursuant to the December 11, 1980, contract. The Secretary shall subjugate such land as is necessary for the irrigation system referred to in the first sentence of this subsection and the December 11, 1980, contract at no cost to the tribe.

(b) The Secretary shall be required to carry out the obligation with respect to the irrigation system under subsection (a) only if the tribe agrees to assume the responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following the completion of that irrigation system and upon delivery of water under this Act, for operation, maintenance, and replacement of those systems in accordance with the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

DISPOSITION OF WATER

SEC. 6. The Tribe shall have the right to devote all water supplies under this Act to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use.

WATER MANAGEMENT PLAN

SEC. 7. The Secretary shall establish a water management plan for the Chuichu area which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

WAIVER AND RELEASE OF CLAIMS

SEC. 8. (a) The Secretary shall be required to carry out the obligations of this Act only if within one year after the date of enactment of this Act the tribe executes a waiver and release in a manner satisfactory to the Secretary of any and all claims for injuries to water rights (including rights to both

surface and ground water) within the Maricopa-Stanfield Water Basin respecting the lands of the Chuichu area of the Sif Oidak District of the Sells Papago Reservation from time immemorial to the date of execution by the tribe of such waiver, which the tribe has against the United States. This waiver and release shall become effective and binding on the tribe only after the Secretary has completed all of the obligations as set forth in section 4 and the full amount authorized to be appropriated in section 7 has been appropriated by the Congress and paid to the tribe.

(b) Nothing in this section shall be construed as a waiver or release by the tribe of any claim where such claim arises under this Act.

(c) The settlement provided in this Act shall be deemed fully to satisfy any and all claims of water rights (including rights in both surface and ground water) of the tribe in lands of the Chuichu area of the Sif Oidak District of the Sells Papago Reservation, as of the date the waiver and release referred to in this section takes effect.

ESTABLISHMENT OF TRUST FUND: EXPENDITURES FROM FUND

SEC. 9. (a) If the tribe executes the waiver and release referred to in section 8(a), the Secretary of the Treasury shall pay to the authorized governing body of the tribe the sum of $10,000,000 together with interest accruing from the date of enactment of this Act at a rate determined by the Secretary

of the Treasury taking into consideration the average market field on outstanding Federal obligations of comparable maturity to be used for the benefit of, first, the Sif Oidak District and, second, other districts of the tribe. The tribe shall invest such sums in interest bearing deposits and securities until expended.

(b) The authorized governing body of the tribe may spend the principal and the interest and dividends accruing on such sum held and invested pursuant to subsection (a) for water rights acquisition, the development of water resources, economic and community development, and costs associated with the economic dislocation of residents of the Chuichu area arising from the depletion of ground water supplies. Income may be used for planning and administrative purposes.

(c) There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of subsection (a).

SOUTH VEKOL WATER BASIN

SEC. 10. (a) Except as provided in subsection (b), after enactment of this Act, no water may be withdrawn from the South Vekol Water Basin which underlies the following Federal lands located in Arizona, Gila and Salt Meridian:

Township 8 south, range 1 east—

Sections 1 through 4 inclusive.

Sections 7 through 18 inclusive, except the northwest quarter, section 14.

Sections 19 through 30 inclusive, except the east one half, section 26.

Sections 31 through 36 inclusive.

Township 9 south, range 1 east—

Section 1.

Sections 3 through 15 inclusive.

Section 17 and section 18.

Township 8 south, range 2 east—

Sections 18 through 20 inclusive.

Sections 28 through 31 inclusive.

Section 33.

(b) The prohibition set forth in subsection (a) shall not apply to water withdrawn by—

(1) the tribe, or

(2) persons withdrawing water pursuant to permits which are in effect on the date of the enactment of this Act.

Such prohibition shall also not apply to water withdrawn pursuant to a renewal of any such existing permit. Existing permittees shall be given the opportunity to renew their permits under regulations of the Secretary to the same extent and in the same manner as such permits could have been renewed if

the prohibition set forth in subsection (a) had not been enacted.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 11. The functions of the Bureau of Reclamation under this Act with respect to lands within the Sells Papago Reservation shall be subject to the provisions of the Indian Self-Determination and Education Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

COMPLIANCE WITH BUDGET ACT

SEC. 12. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1986.

II

99TH CONGRESS
2D SESSION

# S. 2107

To provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26 (legislative day, FEBRUARY 24), 1986

Mr. GOLDWATER (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

To provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Papago-Tat Momolikot Dam Settlement Act".

FINDINGS

SEC. 2. The Congress finds that—

(1) it is the policy of the United States to settle, wherever possible, the land claims of Indian tribes without costly and lengthy litigation;

(2) Tat Momolikot Dam was constructed in 1974 by the Corps of Engineers, Department of the Army, on lands belonging to the Papago Tribe to provide off-reservation flood protection to Pinal County, Arizona, and water conservation for the tribe;

(3) the Papago Tribe agreed to donate appropriate rights to approximately five thousand three hundred and twenty-four acres of land for the Tat Momolikot project on condition that the United States provide certain water conservation, irrigation, fish and wildlife, and other benefits to the tribe;

(4) the United States has failed to provide those benefits;

(5) as a result, the United States has failed to acquire appropriate rights to the lands required for the construction of the dam and its reservoir;

(6) the claims of the Papago Tribe for damages for the use of tribal land by the United States without authorization by the tribe or compensation to it are the subject of prospective lawsuits against the United States;

(7) it is in the long-term interest of the United States and the Papago Tribe to provide a fair and equitable settlement of the claims of the Papago Indians for the injuries they have sustained;

(8) the settlement contained in this Act will—

(A) provide fair and equitable compensation and other valuable considerations to the Papago Tribe and the former residents of Tat Momoli village; and

(B) secure for the United States appropriate rights for Tat Momolikot Dam and its reservoir.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) the term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot;

(2) the term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 478);

(3) the term "Secretary" means the Secretary of the Interior; and

(4) the term "Tat Momolikot Dam" means the dam constructed by the Corps of Engineers, Department of the Army, on Santa Rosa Wash in the Sif Oidak district of the Sells Papago Reservation.

VAIVA VO DEVELOPMENT

SEC. 4. (a) The Secretary shall fulfill his prior obligation to the tribe to furnish benefits for donation by the tribe of appropriate rights to land which were required for construction of Tat Momolikot Dam and its reservoir. To meet this

obligation, the Secretary, acting through the Bureau of Reclamation, shall—

(1) as soon as possible but not later than three years after the date of the enactment of this Act, improve the existing Vaiva Vo irrigation project located within the Sif Oidak district of the Sells Papago Reservation, and subjugate such additional land, and plan, design, and construct such additional canals, laterals, farm ditches, and irrigation works, including wells, as are necessary for the efficient distribution for agricultural purposes of an additional seven thousand seven hundred and twenty acre-feet of water annually, without cost to the tribe;

(2) operate, maintain and replace the existing Vaiva Vo irrigation project and the additions thereto referred to in subsection (a)(1), without cost to the tribe;

(3) within two years after the date of enactment of this Act, construct such fences and cattleguards in the immediate vicinity of Tat Momolikot Dam and its reservoir as may be necessary to protect livestock; and

(4) within one year after the date of enactment of this Act, determine what additional dam safety measures, if any, are necessary to protect life and property in the vicinity of Tat Momolikot Dam and its reservoir

and, within three years after the date of enactment of this Act, take appropriate actions to correct any deficiency.

(b) The functions of the Bureau of Reclamation under this Act with respect to lands within the Sells Papago Reservation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

PAYMENTS TO TRIBE

SEC. 5. (a) If the tribe executes the waiver and release referred to in section 6(a)(1) and the grant of rights referred to in section 6(a)(2), the Secretary of the Treasury shall pay to the authorized governing body of the tribe the sum of $3,000,000 for the benefit of the tribe, and the sum of $100,000 for the benefit of the former residents of Tat Momoli village in compensation for their relocation, together with interest accruing on such sums from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on Federal obligations of comparable maturity.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of subsection (a).

WAIVER AND RELEASE OF CLAIMS

SEC. 6. (a) The Secretary shall be required to carry out his obligations under this Act only if, within one year after the date of enactment of this Act, the Papago Tribe executes—

(1) a waiver and release in a manner satisfactory to the Secretary of any and all claims arising from the use of tribal land in connection with the construction of Tat Momolikot Dam and its reservoir prior to the date of enactment of this Act, and

(2) a grant of appropriate rights for said dam and reservoir;

(b) The waiver and release referred to in subsection (a)(1) and the grant of appropriate rights referred to in subsection (a)(2) shall not take effect until such time as the Secretary has completed the measures referred to in section 4(1) and the payments referred to in section 5 have been made.

COMPLIANCE WITH BUDGET ACT

SEC. 7. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Act. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1986.

Senator DECONCINI. The need for S. 2105 arises from the findings of a 1983 study conducted by the Department of the Interior which found that 5,962 acres of available land on the Gila Bend Reservation had been rendered unsuitable for agriculture because of the operation of Painted Rock Dam, and that the dam's operation had restricted access to the remainder of the reservation.

S. 2105 authorizes funds to allow the tribe to acquire alternative land in exchange for the tribe's assignment of its 9,880-acre reservation to the United States.

S. 2106 recognized that, due to off-reservation pumping of water in the Chuichu area of the Sells Papagos Reservation, the ground water table has been seriously depleted and the tribe has been forced to abandon agricultural development from its 1,200 irrigatable acres as well as an 11,000-acre farming development program that had been proposed by the Secretary of the Interior back in 1949. The bill seeks delivery of an additional 12,000-acre feet of non-Indian agricultural water from the central project.

S. 2107 provides for the settlement of certain claims arising from the operation of Tat Momolikot Dam. It is my understanding that the tribe, the Interior Department, and the Army Corps of Engineers report a case settlement of the tribe's claims for compensation of the flow of easement over the tribal lands and donation of lands from the damsite.

The provisions of the settlement for outstanding water claims of the tribe outlined in the three bills before the committee are fair and reasonable offers to the Federal Government, in my judgment. While the Department of the Interior has adopted a policy of negotiating Indian water settlement, the legislation we have sponsored is the result of tribal initiatives.

The tribe is to be commended for its diligent work in attempting to resolve the disputed claims. The settlement offers have not been negotiated with Interior representatives. However, since introduction, there has been considerable discussion with representatives of the Army Corps of Engineers and individuals within the Interior Office of Trust Responsibility.

I look forward to hearing from administration witnesses this morning who can comment on the nature of these discussions to date and the progress that has been made.

We are all cognizant of the Federal budgetary problems and the need to constrain Federal spending. The bills before the committee today obviously require Federal payments to the Tohono O'odham Nation for the settlement of these claims. While the price tag may seem high and I have questions on how we can reduce these costs, I am confident that calling for lengthy litigation and court time will require even greater expenditures by the Federal Government and that means the taxpayers.

The tribe estimates that the cost of the claims settled in the three bills are in the range of $100 million. I'm not bound to any specific provision contained in these three bills. The discussions which have taken place as a result of the introduction of these bills may produce even better approaches to these settlements.

I ask at this time if Senator Goldwater has any statement that you care to read or offer at this time? I am advised by his staff that he does not.

We will then proceed with the first panel: Dr. Frank Ryan, Deputy Assistant Secretary for Indian Affairs; Lt. Col. Norman Jackson, deputy commissioner, Los Angeles District, U.S. Army Corps of Engineers; and Mr. Gary Hartz, director, Division of Environmenal Health.

Is Mr. Harz here? Very good.

Colonel Jackson, would you like to lead off since you have the microphone there right in front of you? We will put your entire statement in the record if you will summarize it for us.

**STATEMENT OF LIEUTENANT COLONEL NORMAN I. JACKSON, DEPUTY COMMANDER, LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES, CA, ACCOMPANIED BY BOB KOPLIN, ENGINEERING DIVISION, AND DAVID REICHARDT, REAL ESTATE DIVISION**

Colonel JACKSON. Thank you, Senator DeConcini.

I might point out that the witness list needs to be corrected. I'm the deputy commander and not "commissioner."

Senator DECONCINI. I am sorry.

Colonel JACKSON. We have commanders and no commissioners.

Senator DECONCINI. Yes; I know that. I was in the Army. It was so many years ago that I forgot that. Commander, my apologies.

Colonel JACKSON. As you've indicated a need to move along, Senator, I'll point out that I'm representing the Department of the Army, specifically the Los Angeles Corps of Engineers. I have with me today Mr. Bob Koplin from my Engineering Division and Mr. Dave Reichard of my Real Estate Division, who also resides in Arizona.

Since my opening remarks have already been incorporated, I'll summarize with a bottom line summary, in that the Department of the Army opposes S. 2105 because the Papago Tribe has already been compensated for the flowage easement in this land in the same manner as all other landowners in the reservoir.

The Corps of Engineers has operated this dam within the scope of its flowage easement, within the scope of its approved dam regulation manual, and applicable law. No further compensation is due the Papago Tribe because of the construction and operation of the Painted Rock Dam.

I am prepared now to respond to any questions or clarifications that you might need.

[Prepared statement of Colonel Jackson appears in the appendix.]

Senator DECONCINI. Mr. Ryan.

**STATEMENT OF FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC**

Mr. RYAN. Yes, sir; if I may enter the full statement into the record——

Senator DECONCINI. Without objection, it will appear in the record.

Mr. RYAN. I'll make a brief summary.

With respect to S. 2105, the Department of the Interior also opposes that bill. Essentially the reason for that is that we don't believe that the issue of liability has yet been established.

However, we do believe that the tribe may have some water rights and some land rights that have been affected, but what the extent of that liability is and what those damages would be as a result of that liability, we don't know what those are. For those reasons, we don't at this time support this bill.

[Prepared statement of Mr. Ryan appears in the appendix.]

Senator DECONCINI. Thank you.

Mr. Hartz.

**STATEMENT OF GARY HARTZ, DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH, INDIAN HEALTH SERVICE, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROCKVILLE, MD**

Mr. HARTZ. Thank you, Senator DeConcini.

I come before you representing the Indian Health Service of the Department of Health and Human Services, commenting on specific provisions of S. 2105 and S. 2106. We defer to the Department of the Interior on the major issues addressed in both of these bills.

However, in respect to section 9 of S. 2105 and section 4(d) of S. 2106, we understand that as the legislation is set out, the authorities for appropriations to the Department of the Interior would require an association as intended by the committee staff with whom we have discussed these bills through a memorandum of agreement with the Indian Health Service to carry out aspects of these two sections.

We are pleased to report that the Chuichu water system, which is operated and maintained by the Papago Tribal Utility Authority, and the San Lucy water system, which is currently operated and maintained by the city of Gila Bend, are both operated and maintained in an excellent capacity. As a result, we would oppose the imposition of the operation and maintenance costs upon the Federal Government but instead continue to permit the tribes to operate and maintain these systems either themselves or enter into an agreement with a city such as San Lucy has done with Gila Bend, which seems to be working very well. The Papago Tribe has done a fine job in setting up its utilities authority.

Without any other questions, I'll draw my statement to a conclusion and request that my full statement be incorporated into the hearing record.

Senator DECONCINI. Thank you. Without objection, all the statements will appear.

[Prepared statement of Mr. Hartz appears in the appendix.]

Senator DECONCINI. Colonel Jackson, your testimony states that the flowage easement on the Gila Bend Reservation acquired by the Government for the operation of the Painted Rock Dam granted the United States the right to flood and traverse the land as well as to prohibit the use of the land for human habitation. Did the corps expect the tribe to continue to use any of the adjacent land for farming or grazing?

Colonel JACKSON. "Adjacent" meaning outside of the flowage easement?

Senator DECONCINI. Yes.

Colonel JACKSON. I don't know that we made any plans or have addressed that. Our flowage easement and our concerns really are only on the flowage easement——

Senator DECONCINI. What about within the flowage easement?

Colonel JACKSON. No; our intention in purchasing the flowage easement was to prevent habitation.

Senator DECONCINI. Any habitation?

Colonel JACKSON. That's correct.

Senator DECONCINI. Is that a policy position that was stated when you bought the flowage easement; do you know?

Colonel JACKSON. I believe that the normal procedure is to enter into agreements with local sponsors who provide those easements for us. I'm not aware of any precedence that deviated from that.

Senator DECONCINI. When you get those flowage easements, is it only the instrument granting the easement that is signed and given to you from the parties?

Colonel JACKSON. The normal procedure it to enter into what we call a 221-agreement with the local sponsor.

Senator DECONCINI. The agreement, OK.

Colonel JACKSON. A local cooperative agreement.

Senator DECONCINI. A local cooperative agreement. In those agreements does it specifically exclude any use within the flowage easement?

Colonel JACKSON. Let me defer just 1 minute and consult with my——

Senator DECONCINI. Sure, or if you'd like to provide that for the record, it would be all right.

Colonel JACKSON. I think that would probably be the best way, but just let me check.

The normal procedure is that these do preclude habitation. That's normal policy. Normally we go to a local cooperative agreement. In this specific case, of course, the Federal Government did the acquisition.

Senator DECONCINI. Can you give us the pertinent paragraphs or sentences out of the local cooperative agreement——

Colonel JACKSON. I'd be glad to provide it——

Senator DECONCINI. That excludes use within the flowage easement assuming that it's not covered by water?

Colonel JACKSON. Yes, I can. I think we can do that for the record best.

Senator DECONCINI. Thank you.

[Material provided by Colonel Jackson follows:]

The estates taken for said public uses are: (a) As to Tract No. C-312-E, a perpetual right, power, privilege and easement occasionally to overflow, flood, submerge the land described in Schedule "A" or Tract No. C-312-E and all structures and improvements thereon including, without being limited to, fences and all water supply systems, including pumps, motors, equipment, irrigation ditches, and other appurtenances, in connection with the operation and maintenance of the aforesaid Painted Rock Dam and Reservoir project, together with all right, title and interest in and to the structures and improvements now situate on the land excepting, however, existing fences and water supply systems including pumps, motors, equipment, irrigation ditches and their appurtenances; provided that no structures for human habitation

shall be constructed or maintained on the land, but mobile type homes or trailers used for temporary habitation to safeguard property or permit agricultural or feeding operations, shall be permitted on the land if approved in writing by the representatives of the United States in charge of the project, and provided further that no other structures, except for the aforesaid existing fences and water supply systems, shall be constructed or maintained on the land without prior written approval by said representative of the United States; reserving, however, to the landowners, their heirs, executors, administrators, successors and assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; the above estate is taken subject to existing easement for public roads and highways, public utilities, railroads and pipelines.

Senator DECONCINI. The tribe indicates that under the original operating criteria for Painted Rock Dam it was assumed that flooding would occur only once of twice in this period of time. We have evidence it has been flooded four times just in the last 10 years. Does the flooding in the last 10 years contradict in any way any assumption that you think the corps reached when you entered into that cooperative agreement?

Colonel JACKSON. No.

Senator DECONCINI. The corps did not give any estimates of what the possible flooding was when they entered into the cooperative agreement?

Colonel JACKSON. No; that was not part of the cooperative agreement.

Senator DECONCINI. It's not a part of it, but were there any presentations made that you know of?

Colonel JACKSON. No; I'm not aware of any sir.

Senator DECONCINI. Could you task your corps files for that information, whether or not there was any exchange of correspondence or any notes or memos there regarding what the estimates were?

Colonel JACKSON. I sure will. Let me clarify so that I understand what you're asking. We will provide then for the record, documentation referring to predictions of flooding?

Senator DECONCINI. Yes, sir; I'd just like to have it here for the record so I can make a better judgment as to whether or not there was some anticipation on the part of the tribe by the corps, based at the time when you made it. I don't want to infer that there was anything sinister about that, but I'd just like to see whether or not that was part of your judgment at that time. Of course, things change, and that's exactly what may have happened. It has been flooded four times, and the corps might have thought at that time that it would be flooded for a long time. Maybe they kept silent on it. That's what I'm interested in knowing.

Colonel JACKSON. Well, we'll research the planning document for that projection and provide that for you.

Senator DECONCINI. Would you, please? Thank you.

[Material provided by Colonel Jackson follows:]

A search of our available files was made, and during this search, evidence of transmittal of documents to the triibe or their representatives regarding reservoir filling-frequency information was not found.

At the request of the U.S. Department of Justice, the Agricultural Research Service, U.S. Department of Agriculture conducted an investigation of the agricultural potential of reservoir land behind Painted Rock Dam. The report entitled "Soil and Water Investigation in the reservoir area of Painted Rock Dam, Maricopa County, AZ" is dated December 1960. The Corps of Engineers provided information for this

report on probable frequency and duration of flooding for various elevation zones within the reservoir. Our records do not show to whom the report was distributed.

Senator DECONCINI. You originally operated Painted Rock Dam in the 1960's under the criteria of the operation manual that was submitted to Congress. Why in 1978 did you decide to change the operation criteria to the prediction method? Do you believe the dam operates more efficiently under this method?

Colonel JACKSON. The approved regulation plan always included the predictive method. The predictive method is more responsive to flooding that is less than what we call the "standard project" flooding. The fixed schedule method is really oriented toward dealing with floods that are significantly strong to be qualified as a standard project flood. So we use the predictive method which is a little bit more responsive to minor floods.

Senator DECONCINI. That was changed from the operative manual criteria in 1978 because of the floods? Is that what made you change over to the predictive——

Colonel JACKSON. No; the predictive method has always been a part of our——

Senator DECONCINI. That was what was used prior to 1978——

Colonel JACKSON. That's correct.

Senator DECONCINI. What is the cause of the water quality problem being experienced in the Gila Bend area and in the San Lucy District?

Colonel JACKSON. The water quality problem, I'm not sure I understand that. Are you talking about salinity?

Senator DECONCINI. Salinity, exactly.

Colonel JACKSON. The cause of the problem of salinity is ground water—as water is held back in the dam and the ground water level rises, it gets into the roots of the phreataphites and other shrubbery there, and that causes an increase in the salinity. That's my only—that's about the only thing I'm aware of that causes that.

Senator DECONCINI. Have there been water studies on that?

Colonel JACKSON. The Welton Mohawk Irrigation District, I'm not sure if they've done any studies. I'm not aware of any. But I know that part of their procedure is to pump water, ground water, down and out to prevent that gound water rise from getting to the point where it is so saline that it affects——

Senator DECONCINI. Colonel, recognizing the corps' objections to a settlement premised on flooding caused by operation of Painted Rock Dam, would you comment on the assertion that the Gila Bend Reservation has been rendered unsuitable for economic use as much as, if not more than, from the cost of rehabilitation as it has been from flooding?

Colonel JACKSON. Well, it's our position that we fairly well planned the flowage easement area, the reservoir area, and the operation of the dam, and that we did provide previously, compensation to the upsteam landholders for all the damages and flowage easements that would be required, and no further compensation is required because we have not deviated from our intended dam operation.

Senator DECONCINI. Colonel, the information we have, going back to that cooperative agreement, is that there was not a cooperative agreement; that there was condemnation——

Colonel JACKSON. That's correct.

Senator DECONCINI. That brought that about. Is that correct?

Colonel JACKSON. That is correct. What I was referring to was the normal standard. I thought you had asked about policy and normal procedures.

Senator DECONCINI. I did.

Colonel JACKSON. In this specific case, though, we did do the acquisition and condemnation.

Senator DECONCINI. So there was no agreement?

Colonel JACKSON. Only on the downstream areas.

Senator DECONCINI. The downstream areas? You will give us that information on the downstream areas?

Colonel JACKSON. That's correct.

Following are pertinent portions of resolutions of the Maricopa County Board of Supervisors and Yuma County regarding downstream areas:

RESOLUTION OF THE MARICOPA COUNTY BOARD OF SUPERVISORS

Whereas, the United States of America, by Act of Congress, approved May 17, 1950, Public Law 516—81st Congress, 2d Session, authorized the construction of the project for the Painted Rock Reservoir in the Gila River Basin, Arizona, substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 331, 81st Congress, 1st Session; and

Whereas, the recommendations of the Chief of Engineers, as set forth in said House Document Numbered 331, 81st Congress, 1st Session, provide that, before any expenditures are made for construction, local interests furnish assurances satisfactory to the Secretary of the Army; that they will (a) adjust all water-rights claims that may result from the improvement; and (b) keep the flood channel of the Gila River, downstream from the dam, free from encroachment; and

Whereas, Maricopa County has legal authority to furnish such assurance and financial ability to perform the same, and desires to cooperate with the Government of the United States in the construction of said project, as provided by said Act of Congress and said recommendations of the Chief of Engineers; now, therefore, be it

*Resolved* that Maricopa County hereby gives assurances to the Secretary of the Army that, in connection with the construction of said project, to wit: The Painted Rock Reservoir in the Gila River Basin, Arizona, it will:

(a) Adjust all water-rights claims that might result from the improvement; and

(b) Keep the flood channel of Gila River, downstream from the dam, free from encroachment; and

*Be it further resolved* that Maricopa County shall give such additional assurances of local cooperation as may, from time to time, be required by law; and

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RESOLUTION OF YUMA COUNTY, AZ

Whereas, the United States of America, by Act of Congress, approved May 17, 1950, Public Law 516—81st Congress, 2d Session, authorized the construction of the project for the Painted Rock Reservoir in the Gila River Basin, Arizona, substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 331, 81st Congress, 1st Session; and

Whereas, the recommendations of the Chief of Engineers, as set forth in said House Document Numbered 331, 81st Congress, 1st Session, provide that, before any expenditures are made for construction, local interests furnish assurances satisfactory to the Secretary of the Army; that they will (a) adjust all water-rights claims that may result from the improvement; and (b) keep the flood channel of the Gila River, downstream from the dam, free from encroachment; and

Whereas, the County of Yuma, of the State of Arizona has legal authority to furnish such assurances and financial ability to perform the same, and desires to cooperate with the Government of the United States in the construction of said project, as provided by said Act of Congress and said recommendations of the Chief of Engineers; now, therefore, be it

*Resolved* that the County of Yuma of the State of Arizona hereby gives assurances to the Secretary of the Army that, in connection with the construction of said project, to-wit: The Painted Rock Reservoir in the Gila River Basin, Arizona, it will:

(a) Adjust all water-rights claims that might result from the improvement; and

(b) Keep the flood channel of Gila River, downstream from the dam, free from encroachment; and

*Be it further resolved* that the County of Yuma of the State of Arizona shall give such additional assurances of local cooperation as may, from time to time, be required by law; and

Senator DECONCINI. Now in the area of these condemnations, can you also supply us any information involving that condemnation as to references as to use within the flow easement?

Colonel JACKSON. Yes; the planning documentation for the project will outline the predictions that we made.

Senator DECONCINI. If there are provisions in that planning document that specifically make reference to excluding any use, that's what I'd like to see.

Colonel JACKSON. All right.

Senator DECONCINI. If they're not there, then obviously it's not there.

Colonel JACKSON. The planning document, House Document No. 331, September 16, 1949, does not address acquisition at reservoir land nor any contemplated condemnation actions.

Senator DECONCINI. Mr. Ryan, as trustee for the Indian resources, do you agree that the Federal Government has responsibility to protect these water resources?

Mr. RYAN. Yes; I do.

Senator DECONCINI. Then what solution do you have for the tribes in these particular cases?

Mr. RYAN. Well, under the Indian Claims Limitation Act of 1982, notice was published in the Federal Register regarding the potential for damages against off-reservation water users. What that amounted to was a publication on notice for the public that there were certain Indian rights involved.

The first thing is that the Department of the Interior recognizes that Indian rights are involved. The problem is the question what the liability is and how you go about computing the liability in terms of damages.

The second step, then, is to prepare soil and hydrological studies which are capable of being used as evidence by the Department of Justice in a suit by the United States on behalf of the tribe.

Senator DECONCINI. Well, let me interrupt you just to ask a clarifying question.

Am I correct in assuming that your testimony, the response that the Department does not support S. 2105——

Mr. RYAN. That's correct.

Senator DECONCINI. And S. 2106 is because these settlements are not negotiated through the Department's working group? Is that the reason?

Mr. RYAN. That's not exactly accurate. I think what's more accurate is that—well, first, there is a departmental working group, a departmental process that we employ in which we try to work out water rights problems through a negotiation process. Failing to arrive at an equitable settlement for all the parties involved, at

that point it's incumbent upon us to assert our responsibility by actively litigating based upon the evidentiary record that we're able to develop to assert these claims.

Until we get to that point, what we're doing is we try to undertake a process of negotiating and working things out at the same time developing a record which can be used to the advantage of an Indian tribe in litigation against other parties. We see litigation as the last resort if we can't work it out because it takes forever. It takes a long time to work a lot of this out.

Senator DECONCINI. Well, speaking of litigation, in 1949 the Interior Secretary proposed to develop a program for the Papago Tribe that included the development of an 11,000-acre farm, but a decline in the water tables made this impossible. Subsequently, your field solicitor drafted a complaint and recommended that the Department pursue litigation on behalf of the tribe against third parties for their off-reservation pumping of water that resulted in the depletion of ground water resources on the Chuichu Reservation. What has the United States done to protect ground water resources on the Chuichu Reservation?

Mr. RYAN. First with respect to the 1949 decision, I don't know what happened or why appropriations were not forthcoming. With respect to the second issue, which has to do with a report made by a field solicitor, that report more properly, I believe, was directed toward a wider area of water rights for the Salt and Gila Rivers and not just this area, but I do believe that report also specifically covered this area.

Senator DECONCINI. I believe it did.

Mr. RYAN. The answer, though, to your question, sir, is that there has been declining water, depleting water supplies, and the Department's approach to dealing with this is to acknowledge that the claim exists, to publish it to inform the public, to conduct or schedule and to conduct water studies in preparation for litigation while simultaneously trying to get all the parties to the table to work it out in an amicable and equitable way.

Senator DECONCINI. That's the answer to what the Government is doing now to protect the rights——

Mr. RYAN. S. 2106.

Senator DECONCINI. But you haven't worked it out in an amicable way; right?

Mr. RYAN. No, sir; these two bills, S. 2105 and S. 2106, and also S. 2107, have not been a part of the working group process that the Department is employing.

Senator DECONCINI. Why hasn't the Interior Department negotiated on the Tat Momolikot?

Mr. RYAN. Well, what we need to do on the Tat Momolikot, 210——

Senator DECONCINI. Excuse me. You did on that one. Why haven't you done it on the other one, on the Chuichu?

Mr. RYAN. On the Tat Momolikot, though, we——

Senator DECONCINI. You did negotiate that and I compliment you for it. I think you should get your ample praise for that, but, due to time, I want to know why you haven't been able to do the other two.

Mr. RYAN. I think that the other one is—well, as you will hear from the witnesses from the Papago or Tahono O'odham Tribe, these are extremely complex water rights issues involving a lot of parties with a lot of rights. The consequences of doing certain things affect the rights of different people in different ways. It's not susceptible to being worked out in about a week or two and then coming up with something unless you have all of the parties there.

What we need to do is we need to get together and work with the tribe and involve them as part of this process.

Senator DECONCINI. Are you telling me you've only been working on this for a couple of weeks? Hasn't it been going on for several years? Shouldn't it have been?

Mr. RYAN. It probably should have been, yes.

Senator DECONCINI. There hasn't been any ongoing negotiations or dialog with——

Mr. RYAN. I wouldn't characterize—there's been dialog, I'm sure, but I wouldn't characterize the dialog as negotiations. Negotiations would involve getting all the parties involved.

Senator DECONCINI. Are you not aware that the tribe was contemplating filing suit for several years?

Mr. RYAN. I became recently aware of that, yes.

Senator DECONCINI. I am going to submit the balance of the questions, Mr. Ryan, if you would be kind enough to answer them.

[The questions and answers of Mr. Ryan, to be supplied, appears in the appendix.]

Senator DECONCINI. Mr. Hartz, from your testimony, your main objection to the Gila Bend and Chuichu legislation is the provision requiring the IHS to design, construct, operate, and maintain tribal water and sewer systems. You indicate you were worried about setting a precedent in operation and maintenance with local facilities. Do you object to the IHS design and construction of such facilities?

Mr. HARTZ. No; we do not.

Senator DECONCINI. So if there was an operating agreement worked out, then you would have no objection to this legislation?

Mr. HARTZ. That is correct.

Senator DECONCINI. In your testimony you indicated that the role of the IHS is to raise the health status of the American Indian to the highest level possible. Yet, many Indians in San Lucy attribute their health problem to the quality of the drinking water in that area. What has the IHS done to reduce the health risk associated with the high salt content in the water of Gila Bend?

Mr. HARTZ. I am not aware there has been a scientific study done, Senator DeConcini, on the correlation between dissolved solids and the impact on health.

Senator DECONCINI. Why not?

Mr. HARTZ. I am not aware of any completed studies.

Senator DECONCINI. Well, is it in the process?

Mr. HARTZ. I am not aware of it if one is in process, but I could check on that.

Senator DECONCINI. Would you, please? If there is not one in the process, would you advise us why there is not and when there might be?

Mr. HARTZ. That's fine.

[Material to be supplied by Mr. Hartz follows:]

The following is an article from the February 7, 1986, issue of the Journal of the American Medical Association based upon a survey of 342 Gila Bend Papago Indians and 375 non-Indians from July to September 1983:

# Effects of Exposure to Salty Drinking Water in an Arizona Community

## Cardiovascular Mortality, Hypertension Prevalence, and Relationships Between Blood Pressure and Sodium Intake

Thomas K. Welty, MD, MPH; Lambertina Frens-Titulaer, MD, MSPH; Matthew M. Zack, MD, MPH; Peter Weber; Jeffrey Sippel, MD, PhD; Nina Huale, RN, MPH; James Justice, MD, MPH; Dan Dever; Mary Ann Murphy, RN, MPH

• A high level of sodium (440 mg/L) in the water supply of Gila Bend, Ariz, caused concern because of apparently elevated rates of hypertension in Gila Bend Papago Indians. We surveyed 342 Gila Bend Papago Indians and 375 non-Indians from July to September 1983. Participants 25 years of age and older were interviewed for health risk factors, water consumption, and dietary sodium and calcium intake and had height, weight, blood pressure, and urinary sodium and potassium levels measured. No consistent associations were found between any of the sodium values and systolic or diastolic blood pressure. Mean blood pressures for the Gila Bend whites were lower in most age groups than in comparison US white populations. The prevalence rates of hypertension in Gila Bend were not significantly higher than national rates.

(*JAMA* 1986;255:622-626)

THE POSSIBLE health effects of drinking-water sodium content are an important public health issue because the sodium content of many aquifers is increasing, no standards for drinking-water sodium levels exist, and sodium intake may affect blood pressure. Investigations of the association of sodium in drinking water and hypertension have shown conflicting results.[1-4]

A high level of sodium (440 mg/L) in the water supply of Gila Bend, Ariz, caused concern in the Indian Health Service and the Arizona Department of Health Services, Phoenix. We attempted to determine whether the high sodium content of the Gila Bend drinking water was associated with blood pressure levels and compared the prevalence of hypertension and hypertensive mortality rates in Gila Bend with that in referent populations.

### SUBJECTS AND METHODS

All Papago Indians living in Gila Bend and a 40% random sample of Gila Bend non-Indian households receiving municipal water were included in the study. After the 40% sample was completed, two Indian households that used municipal water for drinking were included from an additional 40% random sample to increase the number of non-Indian participants who drank the Gila Bend water supply, to increase the power of the study. Participants were defined as persons living in several households who signed an informed consent form, completed the questionnaire, and had a clinical examination. For participants 18 years of age and older, we administered a health questionnaire and performed a limited clinical examination in their homes. For participants 6 through 18 years old, we obtained demographic information and basic measurements only. For children younger than 6 years of age, only demographic information was obtained.

The questionnaire, a modification of the Centers for Disease Control (CDC) Behavioral Risk Factors Survey[5] used the Second National Health and Nutrition Examination Survey (NHANES II) questionnaire,[6] included sociodemographic information, dietary, occupational, and medical history, and the 1977 National Health and Nutrition Survey Food Frequency Questionnaire.[7] Food models were used to estimate serving size, and dietary manuals[8,9] were used to standardize the amount of sodium and calcium in a standard serving of each food. Sodium and calcium intakes per week from food consumed for each participant by summing the products of sodium and calcium content per serving and the number of

From the Division of Chronic Disease Control, Center for Environmental Health, Centers for Disease Control, Atlanta (Drs Welty, Frens-Titulaer, Zack, and Sippel); Mr Weber; and Ms Murphy), the Department of Community Health Services, Phoenix Area Indian Health Service (Ms Huale), and the Hypertension Program, Division of Disease Control Services, Arizona Department of Health Services (Mr Dever), Phoenix, and the Division of Health Systems Development, Indian Health Service, Tucson (Dr Justice). Dr Welty is now with the Aberdeen Area Indian Health Services, Public Health Service Indian Hospital, Rapid City, SD.

Reprint requests to Chronic Disease Division, Centers for Disease Control, 1600 Clifton Rd, Atlanta, GA 30333 (Dr Zack).

weekly servings for each food.

The survey staff also took three successive blood pressure readings at least five minutes apart, using a random-zero sphygmomanometer and a blood pressure cuff appropriate to the midarm circumference, with participants in a sitting position. Averages of the three systolic pressures and the fifth-phase diastolic pressures were used for all calculations. Participants receiving antihypertensive therapy and participants with a systolic blood pressure of 160 mm Hg or greater or a diastolic blood pressure of 95 mm Hg or greater were considered hypertensive. Height, weight, and oral and ambient temperatures were measured, and participants with fevers (temperature, >37.2 °C) were excluded until they became afebrile. Quetelet's body-mass index (kilograms per meter squared) was calculated to describe obesity. Overnight urine specimens were obtained, after measuring the volume and recording the time of collection, a portion of the specimen was sent to the Clinical Chemistry Division, Center for Environmental Health, CDC, to determine urinary levels of sodium and potassium. Water samples were obtained from all sources used by any individual in the study and were analyzed for sodium, potassium, and calcium. If water was filtered, softened, or treated in any way before consumption, this water was considered as a separate source. Daily sodium and calcium intake from drinking water was calculated by summing the products of the volume of each water source ingested per day and the concentrations of sodium and calcium in that water source.

Questionnaire and medical data were collected on forms precoded for key punching. Data analysis was performed at CDC with statistical[7] software on a mainframe computer. The Tukey-Kramer Studentized range test[8] was used to compare differences between means in the three ethnic groups. A stepwise multiple linear regression was used to determine the association between the sodium intake from drinking water and food and the systolic and diastolic blood pressures.

All death certificates of Gila Bend residents from 1970 through 1983 were coded to the ninth revision of the *International Classification of Diseases*. Proportions of major underlying causes of death were determined and compared with those from 1979 Arizona death records. Straight-line interpolation from the 1970 to the 1980 census was used to calculate standardized mortality ratios for Gila Bend whites. A multiple cause of death analysis of hypertension-related mortality in Gila Bend was performed by counting all deaths with *International Classification of Diseases* codes 400 through 405 (hypertensive disease) and 437.2 (hypertensive encephalopathy), calculating rates of hypertension-related deaths, and comparing them with 1979 Arizona rates of hypertension-related deaths.

Table 1.—Gila Bend, Ariz, Study Participants

| | Age, yr | | | | | | |
|---|---|---|---|---|---|---|---|
| | 0-5 | | 6-24 | | 25-98 | | |
| Ethnic Group | M | F | M | F | M | F | Total |
| White, non-Hispanic | 20 | 13 | 36 | 42 | 62 | 61 | 234 |
| White, Hispanic | 15 | 10 | 18 | 17 | 30 | 24 | 114 |
| Black | 1 | 0 | 3 | 2 | 7 | 6 | 19 |
| Papago | 29 | 32 | 66 | 78 | 62 | 75 | 342 |
| Other Indian | 0 | 1 | 2 | 0 | 2 | 3 | 8 |
| Total | 65 | 56 | 125 | 139 | 163 | 169 | 717 |

Table 2.—Water, Sodium, and Calcium Intake and Sodium Excretion of Subjects 25 Years of Age and Over, by Ethnic Group

| | Mean ± SD | | |
|---|---|---|---|
| | White, Non-Hispanic (N=121) | Hispanic (N=54) | Papago (N=137) |
| Gila Bend, Ariz, water, L* | 1.5 ± 2.2 | 1.0 ± 1.6 | 2.5 ± 2.9* |
| Total water, L | 3.9 ± 2.5 | 3.9 ± 2.2 | 3.7 ± 3.0 |
| Sodium intake, mg | | | |
| Water* | 782 ± 867 | 579 ± 665 | 1,106 ± 1,165* |
| Food | 3,432 ± 1,777 | 4,083 ± 2,001 | 3,581 ± 1,961 |
| Total† | 4,214 ± 2,088 | 4,662 ± 2,282 | 4,687 ± 2,463 |
| % Sodium intake from water* | 16.7 ± 15.3 | 12.0 ± 12.2 | 22.8 ± 15.7* |
| Sodium excretion, mg | 2,805 ± 2,185 | 2,800 ± 1,956 | 3,175 ± 3,352 |
| Calcium intake total, mg | 1,030 ± 648 | 1,306 ± 648 | 947 ± 555* |
| % Calcium intake from water* | 7.6 ± 9.5 | 4.8 ± 8.5 | 10.5 ± 8.8* |

*Papagos are significantly different from whites and Hispanics at the .05 level (Tukey-Kramer Studentized range test[8]).

†Sodium intake does not include sodium in cooking or at the table.

## RESULTS

Household members in 72 Papago households (96%) and 117 non-Indian households (79%) participated, resulting in 717 participants (Table 1). Forty-six percent were 25 years old or older, 37% were 6 to 24 years old, and 17% were younger than 6 years old.

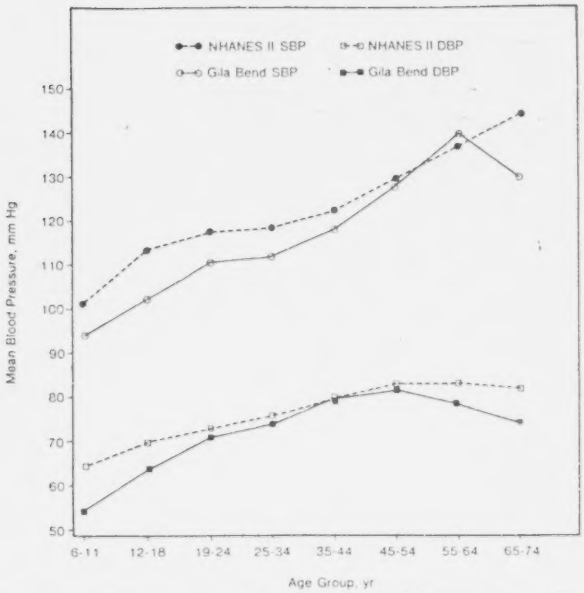
Seventy-six percent of Papago participants and 44% of non-Indian participants in the 40% random sample drank Gila Bend water. The rest drank bottled water, effectively treated water, or water from other communities that was lower in sodium. The 36 drinking-water sources analyzed had sodium levels ranging from 6 to 408 mg/L. These differences in sodium levels allowed us to analyze the association between water sodium intake and blood pressure. Separate analyses were performed for non-Hispanic whites, Hispanic whites, and Papagos.

Although the three ethnic groups did not differ in their mean total water intakes, Papagos drank significantly more Gila Bend water than non-Hispanic whites and Hispanic whites (Table 2). This also significantly increased their amount of drinking-water sodium intake and the percentage of their total sodium intake from water compared to that of the other two groups. The Hispanic whites and the Papagos appeared to consume more sodium in total than the non-Hispanic whites, and the Papagos excreted more sodium in their urine than the other groups. These differences, however, were not statistically significant.

Mean systolic and diastolic blood pressures in Gila Bend non-Hispanic whites were lower than those in NHANES II whites in all age-race groups except for whites aged 55 to 64 years (Figure).

The prevalence of hypertension in Gila Bend Papagos and non-Hispanic whites of either sex did not differ significantly from this prevalence in whites of either sex in NHANES II (Table 3).

In the multivariate analyses, no measure of sodium intake was consistently associated with blood pres-




Mean systolic blood pressure (SBP) and diastolic blood pressure (DBP) by age for whites in Gila Bend, Ariz, and in Second National Health and Nutrition Examination Survey (NHANES II).

Table 3.—Age-Adjusted Percent Prevalence (± SE) of Hypertension* in NHANES II†‡ and Gila Bend, Ariz, Hypertension Survey‡

| | NHANES II | Gila Bend Survey | P§ |
|---|---|---|---|
| All persons aged 25-74 yr | 22.0 ± 0.68 | 22.5 ± 2.3 | NS |
| White men | 21.2 ± 1.04 | 23.8 ± 5.5¶ | NS |
| White women | 20.0 ± 0.66 | 26.0 ± 5.7¶ | NS |
| Hispanic men | Not done | 10.1 ± 5.5 | Not done |
| Hispanic women | Not done | 19.3 ± 8.4 | Not done |
| Papago men | Not done | 19.5 ± 5.1 | Not done |
| Papago women | Not done | 24.7 ± 5.1 | NS¶ |

*Hypertension was defined as elevated blood pressure (that is, a systolic blood pressure of at least 160 mm Hg or a diastolic blood pressure of at least 95 mm Hg) or taking antihypertensive medication.
†NHANES II indicates Second National Health and Nutrition Examination Survey.
‡Rates were age-adjusted by direct method to the US 1978 population.
§*P* values were calculated by comparison of proportions.[14]
¶Excludes Hispanics.
¶Papago women compared with white women in NHANES II.

sure (Table 4). Sodium added at the table was negatively associated with systolic blood pressure in non-Hispanic whites and positively associated in Papagos. Sodium from water was negatively associated with diastolic pressure in non-Hispanic whites and in Hispanics; however, the positive water-age interaction term indicates that drinking-water sodium was positively associated with diastolic blood pressure among older participants in these ethnic groups. Sodium added in the kitchen was positively associated with diastolic pressure, but only in non-Hispanic whites. Calcium intake was only significantly associated with diastolic blood pressure in this study for the three ethnic groups combined.

Standardized mortality rates for hypertension-related causes of death and for heart disease, injuries, and other ill-defined causes by using the underlying cause of death were statistically increased for Gila Bend whites compared with Arizona whites (Table 5). Except for cardiac diseases, these causes of deaths were also proportionately higher among Gila Bend whites than Arizona whites.

## COMMENT

In our study, the mean blood pressures and prevalence of hypertension in Gila Bend, a community exposed to a high drinking-water sodium concentration, were not higher than in a reference population. The study does not provide any evidence that drinking-water sodium intake or sodium intake from food affects blood pressure. The lack of association may result from the effect of the hot climate on sodium metabolism, the saturation effect of sodium intake, the small proportion of individuals sensitive to dietary sodium, insufficient power, imprecise measures of dietary intake, measurement error in blood pressure determination, or the lack of a true biologic relationship between sodium intake and blood pressure.

There may be a relationship between sodium intake and blood pressure, but only at lower levels than the intake in our study,[15] or in a small subgroup consisting of salt-sensitive individuals.[5,16] The regression slope for sodium intake and arterial pressure may be so small (eg, 0.1 mm Hg/mmole of sodium) that a larger sample would be needed to have sufficient power.[4] Using Cohen's method for calculating power in regression analyses, this study had 80% power to detect a 3% change in blood pressure related to water sodium intake.[4]

Sodium loss in sweat was not measured in this study. Profuse sweating (up to 4 L/hr) occurs in acclimatized persons working in the desert, with loss of 3 to 5 g of sodium per day.[3] Differences in perspiration could explain the discrepancies in sodium intake and excretion between ethnic groups. All epidemiologic methods of assessing dietary intake are of arguable validity.[2] We tried to be comprehensive in obtaining information on all sources of sodium and calcium in the diet, including condiments and medication. A one-time overnight

Table 4.—Results From Stepwise Regression of Various Factors on Systolic (SBP) and Diastolic Blood Pressure (DBP) in Participants Over 24 Years of Age*

| | White Non-Hispanic | | Papago | | Hispanic | | All | |
|---|---|---|---|---|---|---|---|---|
| | SBP | DBP | SBP | DBP | SBP | DBP | SBP | DBP |
| Sodium from water | 0 | − | 0 | 0 | 0 | − | 0 | 0 |
| Age | + | + | 0 | − | + | + | + | + |
| Age squared | 0 | − | 0 | 0 | 0 | − | 0 | − |
| Female sex | + | − | 0 | − | − | − | − | − |
| Body-mass index | 0 | + | 0 | 0 | + | 0 | + | + |
| Highest grade completed in school | + | 0 | 0 | − | 0 | 0 | 0 | 0 |
| Sodium from food | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Sodium added in kitchen | 0 | + | 0 | 0 | 0 | 0 | 0 | 0 |
| Sodium added at table | − | 0 | + | 0 | 0 | 0 | 0 | 0 |
| Alcoholic drinks per month | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Lifetime cigarettes | 0 | 0 | 0 | 0 | + | 0 | 0 | 0 |
| Total calcium intake† | 0 | 0 | 0 | 0 | 0 | 0 | 0 | − |
| Interaction terms | | | | | | | | |
| Sodium water × age | 0 | + | 0 | 0 | 0 | + | 0 | 0 |
| School × age | 0 | 0 | 0 | + | 0 | 0 | 0 | 0 |
| School × sex | − | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Age × sex | 0 | + | 0 | 0 | 0 | 0 | 0 | 0 |
| $R^2$ | 0.42 | 0.40 | 0.07 | 0.26 | 0.54 | 0.48 | 0.19 | 0.26 |
| No. of patients | 103 | | 118 | | 44 | | 265 | |
| No. receiving antihypertensive medication (excluded from analysis) | 18 | | 16 | | 8 | | 40 | |

*Plus sign indicates positive association; minus sign, negative association; and zero, no statistically significant association ($P > .05$).
†Includes calcium intake from food and water.

urine sample, however, is not the best indicator for sodium excretion in urine.

The random-zero sphygmomanometer has been shown to measure lower mean systolic and diastolic pressures (1.8 and 0.9 mm Hg, respectively) than the standard sphygmomanometer.[23] However, if these 1.8- and 0.9-mm Hg values are added to the Gila Bend mean blood pressures, the levels are still comparable to or less than the NHANES II mean levels.

A combination of several of the mentioned possibilities is the most likely explanation for the lack of association between sodium intake and blood pressure in this study.

The proportionate and standardized mortality analyses for Gila Bend whites, using Arizona whites as a standard, show disparate results. Although cardiac deaths are proportionately lower in Gila Bend than in Arizona as a whole, the standardized mortality rates for cardiac disease (underlying cause) and hypertension-related diseases (all mentions) are significantly elevated. The relatively low proportion of elderly persons in Gila Bend compared with Arizona (7.4% vs 11.3% aged 65 years and older in the 1980 census) and the excessive injury death rate are the primary reasons for this difference. The standardized analysis indicates that 12 excess deaths related to hypertension occurred in Gila Bend whites during a 14-year period. The excess deaths may have resulted from the high sodium content in the drinking water, other risk factors present in Gila Bend, or chance. Differential reporting of hypertension-related deaths in Gila Bend compared with Arizona is unlikely, as no trends were seen, and the 16 death certificates

Table 5.—Mortality of Gila Bend, Ariz, Whites From 1970 Through 1983 Compared With 1979 Arizona White Mortality*

| Rank | Underlying Cause of Death | Observed Gila Bend Deaths | Proportionate Mortality Rate† | | Expected Gila Bend Deaths | Gila Bend Standardized Mortality Rate‡ | 95% Confidence Limits of Standardized Mortality Rate |
|---|---|---|---|---|---|---|---|
| | | | Gila Bend | Arizona | | | |
| | All causes | 174 | 100.4 | 100.2 | 110.6 | 157 | 145-183§ |
| 1 | Heart disease | 55 | 31.6 | 33.6 | 32.9 | 167 | 126-218§ |
| 2 | Cancer | 24 | 13.8 | 22.0 | 23.3 | 103 | 66-153 |
| 3 | Cerebrovascular diseases | 7 | 4.0 | 7.5 | 6.6 | 106 | 43-218 |
| 4 | Injuries | 32 | 18.4 | 8.0 | 11.8 | 270 | 185-382§ |
| 5 | Chronic obstructive lung disease | 6 | 3.5 | 4.1 | 4.2 | 142 | 52-309 |
| 6 | Pneumonia and influenza | 2 | 1.2 | 2.3 | 2.4 | 85 | 10-305 |
| 7 | Diabetes mellitus | 2 | 1.2 | 1.5 | 1.4 | 142 | 17-511 |
| 8 | Cirrhosis of liver | 6 | 3.5 | 1.7 | 2.1 | 280 | 103-610§ |
| 9 | Arteriosclerosis | 1 | .6 | 1.3 | 1.1 | 93 | 2-516 |
| 10 | Suicide | 4 | 2.3 | 2.3 | 3.2 | 124 | 34-316 |
| 11 | Diseases of infancy | 5 | 2.9 | 1.3 | 3.6 | 139 | 45-324 |
| 12 | Homicide | 4 | 2.3 | 0.9 | 1.3 | 299 | 81-765 |
| 13 | Nephritis | 2 | 1.2 | 0.8 | 0.7 | 279 | 34-1,008 |
| 14 | Aortic aneurysm | 1 | .6 | 1.0 | 1.0 | 104 | 3-579 |
| 15 | Congenital anomalies | 2 | 1.2 | 0.9 | 2.1 | 93 | 11-336 |
| 16 | Other and ill defined | 21 | 12.1 | 11.0 | 110.6 | 157 | 102-252§ |
| | Multiple cause of death analysis, hypertension related | 16 | 8.6 | 4.1 | 3.8 | 416 | 238-676§ |

*Source: Vital Statistics of the United States, 1979.
†Proportionate mortality rate = (observed deaths/total deaths) × 100.
‡Standardized mortality rate = (observed deaths/expected deaths) × 100.
§Denotes a significant increase in standardized mortality rate.

involved were signed by 13 different physicians.

Although this study does not provide any evidence of a positive association between blood pressure and water sodium intake, it was not designed to evaluate the effect of the high drinking-water sodium level on hypertensive patients, cardiac patients, or persons who are genetically sensitive to sodium intake. Drinking water high in sodium has been reported as an unsuspected cause of cardiac decompensation.[19] The American Heart Association recommends that patients consuming a low-sodium diet drink water containing no more than 20 mg/L of sodium.[20] Further investigation should determine whether salt-sensitive subpopulations are adversely affected by high sodium intake in drinking water.

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Senator DECONCINI. Thank you. Anybody else have questions?

[No response.]

Senator DECONCINI. Thank you very much.

The next witnesses can come up. I'm going to take a couple of minutes break here.

Josiah Moore, chairman, Tohono O'odham Nation; Max Jose, chairman, San Lucy District; and Willard Juan, water commissioner; accompanied by William Strickland, counsel, and William Byler.

[Recess taken.]

Senator DECONCINI. Please proceed.

## STATEMENT OF JOSIAH MOORE, CHAIRMAN, TOHONO O'ODHAM NATION

Mr. MOORE. Senator DeConcini and members of the committee, we appreciate this opportunity to testify in support of the three bills that Senator Goldwater and you, yourself, Senator DeConcini, have sponsored to settle certain claims to the Tohono O'odham Nation against the United States. Those claims relate to the ones you've already mentioned here before.

The settlements embodied in the proposed legislation are the result of more than a decade of thought and work and discussions among the O'odham people and with the Federal and State officials, Members of Congress, and congressional staff. The bills seek to resolve fairly and reasonably recent O'odham claims and those that have gone unsettled for many years.

Also, we have worked with the Department of the Interior, Bureau of Indian Affairs. We met with them and listened to information embodied in the bills, the calculations that were worked out along with the tribes, having made available to the Bureau on May 3, 1986. This is following a meeting that we had with the Department of the Interior.

We would like the committee to consider these in terms of the benefits and the opportunities, the advantages to the Tohono O'odham.

This will conclude my opening statement because we do have all the information available to you.

Before I turn the time over to the other gentlemen here, I'd like to acknowledge that we do have a delegation from the San Lucy District council and also the Sif Oidak District council.

I'd like now to turn the time over to Max Jose, who is the water commissioner from the San Lucy District, to make a statement.

[The prepared statement of Mr. Moore appears in the appendix.]

## STATEMENT OF MAX JOSE, WATER COMMISSIONER, SAN LUCY DISTRICT (GILA BEND), TOHONO O'ODHAM NATION, AZ

Mr. JOSE. Thank you, Mr. Chairman, Senator, members of the committee.

My name is Max Jose, a member of the Tohono O'odham Nation's water commission and a member of the tribal council of the Tohono O'odham Nation.

The Gila Bend Reservation is in the San Lucy District. I'm here today to testify in support of S. 2105 and urge the committee to

report the bill as soon as possible so it can be enacted in this Congress. The legislation would enable us to replace our reservation.

Mr. Chairman, the San Lucy people have been fighting for more than a century to protect the Gila Bend Reservation. The reservation was established in 1882, and at that time it covered more than 23,000 acres of land. In 1909 more than 12,000 acres were taken away from us and given to the Southern Pacific Railroad and other non-Indian interests. In the last few years the rest of our land has been destroyed by the operation of Painted Rock Dam.

The San Lucy people today have only 40 acres of land to live on. Many of our people have to live elsewhere because there is not enough land. The last 100 years have been a struggle for survival, but now the survival may be gone because of our reservation that has been destroyed, and with it all of our hopes for the future. I do not think that we can survive another century where we are presently.

The present bill would grant the tribe $30 million in exchange for assignment of most of our reservation lands to the Federal Government. With this money, we would be able to buy other lands for our homes and to develop economic enterprises. We would also assign the water rights to the land. There are rights to approximately 30,000-acre feet of water with a priority date of 1882. We would also waive any claim for damages against the United States for injuries to land and water, the value of which is more than $100 million.

As you know, Mr. Chairman, the Southern Arizona Water Rights Settlement Act provides that the Secretary of the Interior may exchange land in the public domain for reservation lands. The tribe undertook a study of land within a 100-mile radius of the reservation and could not find public domain lands suitable for such an exchange. That is why we need this legislation, so we can buy land to replace our old reservation.

The people of the San Lucy District also support settlement claims of the Tohono O'odham Nation for the Sif Oidak District.

This concludes my testimony, Mr. Chairman, and I appreciate the time you have given me to express the concerns that we have in the State of Arizona and Gila Bend.

Senator DECONCINI. Thank you.

## STATEMENT OF WILLARD JUAN, WATER COMMISSIONER, SIF OIDAK DISTRICT, TOHONO O'ODHAM NATION, AZ

Mr. JUAN. Thank you, Mr. Chairman, for allowing me.

My name is Willard Juan. I'm from the Sif Oidak District of the Tohono O'odham Nation. I serve on the tribe's water commission. I'm here to testify in support of S. 2106 and S. 2107.

I once had the Government land to develop an 11,000-acre farm in the Chuichu area. Today we cannot farm any land in the Chuichu area because there is no water. Non-Indian farmers off the reservation had pumped in the land dry. The situation is so bad that our domestic wells are going dry. We will have to abandon three villages unless something is done.

The tribe will be able to farm 1,400 acres which is in the allocation from the central Arizona project. With this bill, we will have

enough water to be able to farm another 2,200 acres, giving us a total future farming area of 3,700 acres.

The bill would also provide us with a domestic well supply for the three villages. The other bill would settle our claim against the Government for taking our land for construction of the Tat Momolikot Dam.

The Government promised to construct a 1,640-acre irrigation system and other facilities in exchange for the easement in 4,324 acres of land and to pay us for flowage easement in more than 9,000 acres of land. The Government has not constructed the facilities promised and has not paid us for the flowage easement. The dam was completed 12 years ago. The tribe is ready to grant all the easement if the Government gives it the benefits that are mentioned in the bill.

The people of Sif Oidak District also support the Gila Bend settlement.

I hope the committee will report the three bills soon so that we can settle these disputes this year.

Thank you.

Senator DECONCINI. Thank you.

Mr. Chairman, let me just ask a question of you: How did you arrive—Chairman Moore, how did you arrive at the $30 million in compensation to the tribe as the cost of locating and developing a new reservation?

Mr. MOORE. Senator, we have a gentleman with us here, the attorney, William Strickland, and also William Byler. I would like to refer that to either of the gentleman.

Mr. BYLER. You are well acquainted with the value of water in Arizona. A reasonable price for water from appraisals we have available to us is a $1,000 an acre-foot. That's one way of approaching it.

Forget about the value of the desert land without water, the residual value. Thirty thousand acre-feet, I think everybody would concede, is a conservative statement of what the right entitlement is there. Thirty thousand acre-feet times $1,000 an acre is $30 million.

You can calculate it independent of the water rights. You can get higher values and lower values. Recent purchases of farmland with this ground water right, for example, for Meas. All of these give you a value somewhere in the neighborhood of $25 to $45 million.

Now that's just the value of the water right. Look at the value of the damages that have been incurred. We estimate—and it's in Chairman Moore's statement—that the damages—we stopped counting at over $100 million.

How is that calculated? You take a Government figure that they provided, a 1962 figure, for profits that would have come from the Vaiva Vo farms if they had ever completed that. It's better land over there actually at Gila Bend. We took a conservative figure.

You compound the lost payments, the lost farm income, over the number of years, compounded at 10 percent, and end up with well over $100 million.

The assumptions are you could take a lower interest rate and a higher rate of——

Senator DECONCINI. What's your current estimate appraisal value of the Gila Bend Reservation?

Mr. BYLER. Our appraisal value is—there has been no formal appraisal. We estimate it's worth $30 million.

Senator DECONCINI. Would you please hold just 1 minute?

[Pause while Senator DeConcini takes a phone call.]

Mr. BYLER. If I may conclude my remarks on the evaluation.

Senator DECONCINI. Please do.

Mr. BYLER. $30 million is a reasonable price for the land. It's not what we need to go out, the tribe, and buy a future for the people. We are transferring something of value to the United States. We calculate 6,000 acres of irrigatable and practically irrigatable land. Take a conservative duty of water of 5-acre-feet per acre. Multiply five by 6,000 and that's your 30,000.

The United States gets that water right with the priority date of 1882. You know where that water is. It's up stored behind the Roosevelt zone.

That pulls the tribe off the Gila River adjudication. If the United States wants to adjudicate on its own behalf, the tribe abandons 30,000-acre-feet to the United States or to whomever. That's something that the tribe gets out of it.

Senator DECONCINI. What was the value of the reservation prior to the floods from the Painted Rock Dam? Is there any determination of that?

Mr. BYLER. Sir, the $30 million is the value before the flood.

Senator DECONCINI. That's before the flood.

Mr. BYLER. Today we say it's—the Bureau of Indian Affairs says it's worthless.

Senator DECONCINI. How long has the tribe—Mr. Strickland, you're in a better position to answer this—how long has the tribe been negotiating these two bills, S. 2105 and S. 2106?

Mr. STRICKLAND. Mr. Chairman, these were part of the original bills in the Southern Arizona Water Rights Settlement Act.

Senator DECONCINI. Give me the history for the record. I know it, but give me the history.

Mr. STRICKLAND. OK.

Senator DECONCINI. When did we work that problem out, how long ago?

Mr. STRICKLAND. In 1976 is when we started working on both of these areas.

Senator DECONCINI. That includes these two particular Chuichu and——

Mr. STRICKLAND. Chuichu and the Gila Bend.

Senator DECONCINI. The Gila Bend. Back in 19——

Mr. STRICKLAND. 1976.

Senator DECONCINI. When you first started negotiating this along with the Papago settlement?

Mr. STRICKLAND. Right. and the BIA was well aware of it. It was part of the bills that were submitted in the beginning. As you know the history, and you gave part of it yourself——

Senator DECONCINI. I know the history, but what I'd like to do is give you an opportunity to lay it out here for the record.

Mr. STRICKLAND. The tribe in 1976 passed a resolution requesting litigation to be filed in these areas by the BIA and the Justice De-

partment. This was rifled up to the D.C. area. Along with this, they started then a complete study of the Chuichu area specifically in there for that litigation, and W.S. Guckin did a thorough litigation report on hydrology and soil to compile with all the reports I have in my office about that thick [indicating] on just the soil and the water, studies done by the BIA, the U.S. Geological Survey, special commissions by the BIA to Guckin to do certain studies in these areas. So I don't know—they studied it to death.

Then the field solicitor, who at that time was Bill Lavelle, and two of his other solicitors wrote a legal litigation report recommending, along with other suits, that they file suit in the Chuichu area, specifically with the Chuichu area. This was sent up to Washington with all the reports, the litigation report, the hydrology, everything that went with it, and a recommendation plus a draft complaint. Chuichu was in the draft complaint, part of the suit. That is where it died and that was in 1979.

Since that date, as you recognize, we have been working with the BIA continuously, still dealing with the same problem. As you can recognize along with this, if we waited—we never contented that the Government's going to file suit on our behalf, like Dr. Ryan said. We're going to have to file ourself. If we waited for the Government to file, at the rate they're going, it would be somewhere around 2050—maybe—because they have already spent 7 years since that litigation report came up with the draft complaint and it hasn't even moved 1 inch.

Now as far as negotiating with the BIA, when we had Bill Horne there, we worked with him in the Tucson area. When that was over with—Bill Horne headed up that Department of the Interior group that worked out the problem we had down at Afagoit in Tucson, that one. After that was over with, that whole committee kind of dissipated away. There was a void in there. Nobody would negotiate for some time and then they started this new committee that they formed up at the present time that has been working, I guess, on other water settlements.

Senator DECONCINI. So it's safe to say that the Interior Department has been involved in negotiations since 1976?

Mr. STRICKLAND. Definitely, and they've got studies. I don't know how they could study it any more and get any more results.

Senator DECONCINI. Let's return to the Chuichu settlement legislation. It authorizes the Secretary of the Interior to contract with the tribe for an additional 12,000-acre-feet of CAP water, non-Indian allocation. The tribe has already contracted for 8,000 acres of CAP water under the Indian allocation. It's my understanding that the operation and maintenance and replacement cost for that water is to be paid by the tribe, not the Department of the Interior.

Why is the tribe now asking for the old M&R cost of both the 8,000 Indian allotment and the 12,000 non-Indian allotment to be borne by the Federal Government?

Mr. STRICKLAND. The basic reason was that at the time the reservation was formed originally, that was in 1912. Twenty-five thousand acres was set aside. There was quite a bit of flowing streams through there, but water, the underground water basin in storage was less than 50 feet from the surface. So the cost that the tribe had of that water, to have that water on their land, was nominal.

We feel now that if the—to put the tide back in the status quo, then the Feds should pay the cost of that water.

Senator DECONCINI. The legislation also contains a provision reserving the ground water supply to the South Papago basin for the exclusive use of the Papago Tribe. Do you know how much water can be obtained from this basin? Are there currently any other users who are pumping ground water from the basin?

Mr. STRICKLAND. The only known person I have is a couple of small cattle pumps out there where they have lease and we recognize that in our bill, that those are reserved; all their rights are reserved to those people.

You've got to recognize that that water basin is at least 50 percent under the reservation and, if not, it might be more when you complete the total study. What we're really doing there is preventing future litigation, because if anybody went out to use that portion that's sitting off the reservation would be pumping the water from under the reservation there and be back into another problem of litigating that problem.

To answer your question, how much water, we don't know. That's going to take a lot more work to find out how much water is there.

Mr. BYLER. Let me add, Senator, that we ran this proposal by the State when Wes Steiner was director of the water, the State water department, and more recently. They have no objection to that provision.

Senator DECONCINI. Can you give us a little background, Mr. Chairman, of just how bad the water quality is in the Gila Bend area? I'm aware of that, but I'd like the record to show the situation there. Would you care to comment? What is the situation? Is any of that water palatable at all? What do people do for drinking water now? How many people are involved?

Mr. JOSE. Right now the approximate people that are involved, according to our enrollment figures to date—they're just not completed—is about 990 people.

We have done a preliminary study with the assistance of the Center for Disease Control in Atlanta. Our original request was that they determine if the water is related to the health problems at San Lucy. The way that the scope of work was done did not really relate that problem, but the study did reveal that the majority of the people at Gila Bend from years back had been buying and using bottled water.

Senator DECONCINI. How many years?

Mr. JOSE. I think something like 25 years back that they've been using that. They don't have much health problems. On the other hand, my people have continually drunk that water, and the study did reveal that there is a high rate of hypertension. For a community that size, it has the highest rate of kidney disease, which I am one of those persons with kidney disease.

Senator DECONCINI. Have you drank that water?

Mr. JOSE. Yes.

Senator DECONCINI. Has IHS done any comprehensive tests?

Mr. JOSE. No; they have not. We have submitted that report that was done by the Center for Disease Control. These were some recommendations made to extend that study, and I've been trying to

get the Office of Research and Development at Tucson to put forth some funding so that they can expand that.

Senator DECONCINI. When was that study?

Mr. JOSE. I believe it was in 1982.

Senator DECONCINI. 1982.

Mr. JOSE. 1982; right.

Senator DECONCINI. You have submitted that to IHS?

Mr. JOSE. Right.

Senator DECONCINI. And asked them to continue the study or expand on it?

Mr. JOSE. Expand on it so we can have——

Senator DECONCINI. What has their answer been?

Mr. JOSE. There really hasn't been any answer, no response.

Senator DECONCINI. Has Interior been advised of this study, also?

Mr. JOSE. I don't know whether they have. We did submit that. Maybe the chairman of the nation would comment on it, but we did submit a copy of that also to our nation's health board, and they are familiar with it. I don't know what they did, whether they referred that to another agency or whatever happened to that.

Senator DECONCINI. It appears from the record that IHS has done nothing. I wonder if Interior is advised of this problem and what they have done in their capacity for trust responsibilities.

Mr. MOORE. Not directly to the Washington office. We have attached this information to our housing improvement program.

Senator DECONCINI. When was that done?

Mr. MOORE. We did this last year in 198——

Senator DECONCINI. 1985?

Mr. MOORE. Right.

Senator DECONCINI. So they do have that report there?

Mr. MOORE. They have that information available. As a matter of fact, one of the areas that we thought we would provide for the record later on is that information.

Senator DECONCINI. How big a report is that?

Mr. MOORE. It's not a lengthy report.

Senator DECONCINI. Would you supply that to us?

Mr. MOORE. This is on the housing improvement program.

Senator DECONCINI. I mean the study of the water done by the Center for Disease Control.

[Material to be supplied was not available at time of printing.]

Senator DECONCINI. Changing the subject, I'm interested in reducing the Federal outlays for a new reservation. You mentioned in your testimony that the tribe may propose that the Secretary sell Federal lands within his jurisdiction to the tribe. Can you expand on this proposal, and have you discussed this with Interior?

Mr. MOORE. Senator DeConcini, in reference to that question, I think that is some of the areas that we would like to consider or to look at some more, because of the certain studies that have been done on Federal lands and private lands, I think we're not in a position right now to indicate that.

Senator DECONCINI. Can you do that or you're just not in a position? You mentioned that in your testimony someone must have thought someplace there was a solution here. Your don't have to do it today, if you want to supply that to us.

Mr. BYLER. The tribe has, spending its own money, looked at some Federal lands, BLM lands that are not useful for reservation purposes but might be useful for investment purposes, economic development purposes. They would not be taken into trust, but in lieu of purchasing some private land for investment purposes——

Senator DECONCINI. I see, sell BLM land——

Mr. BYLER. To the tribe or——

Senator DECONCINI. Or sell it and convey the money to the tribe?

Mr. BYLER. That would work——

Senator DECONCINI. So the tribe could buy other land?

Mr. BYLER. We would like to have the certainty of the $30 million rather than the obligation to going out and having the compensation dependent upon the Federal Government raising the money through its sale of land, but there is not much land there. As you know, the State is not finding the lands that it really is entitled to. We were not able to find very much.

But there may be some small tracts here and there that somehow could reduce the cost. We also propose that that land be sold to people who might use, whereas some BLM land is not suitable for reservation purposes. If the Federal Government wants to raise money, they don't seem to mind giving away land which has a value; they don't like to give away money which has value.

Senator DECONCINI. I'm not sure they give away the land; they sell it.

Mr. BYLER. Well, sell, yes.

Senator DECONCINI. And trade it, of course.

Mr. BYLER. Giving it to the tribe.

Senator DECONCINI. Maybe they sell it under market but many times they sell it at market, but there doesn't seem to be a shortage of buyers.

We'll submit some further questions.

[Questions and answers, to be supplied, appears in the appendix.]

Senator DECONCINI. Do you have any other testimony to give today?

Mr. BYLER. One comment on the negotiation process. The Department is a new team. They're not aware of the fact that the tribe right after Southern Arizona Water Settlement Act went to Bill Horne and said, "It seems appropriate, since the tribe's complaint is bilateral claims against the United States, that the Congress become the forum for the negotiations." Bill Horne agreed.

So we have since 1982 been working with the congressional staff, the congressional delegation, as the focal point for negotiations. They cane in with a new team. They're not aware of these prior commitments. In fact, the team was formed after these bills were introduced.

We're willing to talk with them, but they're not sure who is responsible in the Department for this. We get told one day talk to so and so and the next day talk to somebody else.

Senator DECONCINI. Thank you very much.

[Whereupon, at 11:55 a.m., the committee recessed to reconvene at the call of the Chair.]

# APPENDIX

## Additional Material Submitted for the Record

### PREPARED STATEMENT OF LIEUTENANT COLONEL NORMAN I. JACKSON, DEPUTY COMMANDER, LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS

Good morning. I am Lieutenant Colonel Norman Jackson, Deputy Commander, Los Angeles District and I am here this morning to comment for the Department of the Army on S. 2105. I have with me Mr. Bob Koplin of my Engineering Division, and Mr. Dave Reichardt of my Real Estate Division. The bill, as you know, provides, among other things, for the settlement of potential claims of the Papago Tribe of Arizona related to the operation of Painted Rock Dam in southwestern Arizona.

The Corps of Engineers constructed the Painted Rock Dam on the normally dry Gila River in 1959 to protect downstream private and public properties and improvements -- including the extensively developed agricultural lands within the Wellton-Mohawk Irrigation District -- from flood damage.

In connection with the construction of the dam, the United States acquired appropriate real estate interests in the lands within the reservoir. The United States acquired in fee approximately 5,000 acres of non-Indian owned low lands within the reservoir, i.e. lands below elevation 580. On lands between elevation 580 and 661 feet, the United States acquired flowage easements. This flowage easement area of the

reservoir involved 52 tracts of land totalling about 37,000 acres. One of these tract -- containing 7,743.82 acres -- is land within the Gila Bend Indian Reservation owned in fee by the United States in trust for the Papago Tribe of Arizona.

Prior to the acquisition of the flowage easement, the Indian land was appraised by an independent land appraiser under contract with the Corps of Engineers. After a thorough investigation of the land, the market for similar lands in the vicinity, and the effect that the easement would have on the Indian land, the appraiser estimated the value of the perpetual flowage easement to be $139,000.00. In 1962, the United States filed an eminent domain proceeding in the U.S. District Court in Arizona to secure the easement. A judgment was entered in that proceeding confirming the vesting of the flowage easement in the United States and setting the just compensation for the easement at $139,000.00. That amount was paid to the Bureau of Indian Affairs for the use and benefit of the Papago Tribe of Arizona. The easement acquired granted the United States the perpetual right to occasionally overflow, flood, and submerge the land and all structures on the land, as well as to prohibit the use of the land for human habitation.

In addition to the compensation mentioned above, the Indian families living within the reservoir were relocated to the new village of San Lucy, constructed outside the limits of the reservoir. The relocation was accomplished at a Federal cost of $269,500.00 under the provisions of special legislation and consisted of the purchase of a 40-acre parcel of

land and the construction of conventional houses and a community building to replace the substandard dwellings within the reservoir.

The Department of the Army opposes the enactment of S. 2105 for the reason that the Papago Tribe of Arizona has been compensated for the acquisition of the flowage easement and any damages which result from the operation of Painted Rock Dam.

For Painted Rock dam, Congress authorized construction of the dam "substantially in accordance with the recommendations of the Chief of Engineers" in the House Document which states that it shall be "generally in accordance with the plan of the district engineer" and with "such modifications thereof as in the discretion of the Chief of Engineers may be advisable." The dam, as finally designed and constructed, has been operated in furtherance of the congressionally mandated project purpose. The Reservoir Regulation Manual for the project sets forth three methods for operating the dam. Two of these methods involve fixed operation schedules for the dam, one of which is substantially similar to that in the House Document for the project. However, these schedules are designed for controlling the standard project flood -- that is to say, the largest flood anticipated given poor ground conditions. The manual specifically states that the Corps may operate the dam on a prediction basis during floods that are smaller than the standard project flood in order to maximize flood control benefits.

Operation on a prediction basis establishes the rate of release of floodwaters from the dam based on upstream and downstream conditions

including prior and forecasted rainfll and runoff, ground conditions, current reservoir storage, conditions at upstream dams, the status of dams on the Colorado River, and the relationship between reservoir releases and downstream damages. Unlike a fixed operation schedule which provides a fixed rate of release for specific water elevations in the reservoir, the prediction basis provides greater flood control benefits for floods that are smaller than the standard project flood.

All of the floods that have occurred at the project since its construction have been smaller than the standard project flood and the Corps of Engineers has operated the dam on a prediction basis pursuant to the manual.

The issue of whether the Corps of Engineers may properly operate Painted Rock Dam on a prediction method rather than in accordance with the fixed schedule method set forth in the House Document for the project is the subject of two cases currently pending with non-Indian owners of other lands in the reservoir. One case is pending in the U.S. District Court in Arizona. The other case is before the U.S Claims Court. The Department of Justice believes that these cases will be resolved in favor of the United States and will confirm the right of the Corps of Engineers to operate the dam on the prediction method without the payment of additional compensation to the owners of land within the flowage easement area of the reservoir.

In summary, the Department of the Army opposes S. 2105 because the Papago Tribe has already been compensated for the flowage easement in its

land in the same manner as all other landowers in the reservoir. The Corps of Engineers has operated the dam within the scope of its flowage easement and applicable law. No further compensation is due the Papago Tribe because of the construction and operation of Painted Rock Dam.

Thank you for the opportunity given to the Department of the Army to comment on this bill.

STATEMENT OF FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY, INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR

July 23, 1986

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here to present the views of the Department of the Interior on S. 2105, S. 2106, and S. 2107. Each of the bills involves the Tohono O'odham Nation of Arizona and is intended to provide for the settlement of claims involving the Department of the Interior.

We oppose S. 2105 and S. 2106. With respect to S. 2107, we offer an alternative approach to compensating the tribe which we could support.

S. 2105 (Gila Bend):

S. 2105 addresses land and water rights claims of the tribe with respect to the Gila Bend Indian Reservation. These claims primarily relate to periodic flooding of all water flowage easements on reservation lands caused by the operation of Painted Rock Dam.

Section 4(a) would require the Secretary of the Interior to pay $30 million to the tribe if the tribe assigns to the United States all current right, title, and interest to 9,880 acres of land witnin the Gila Bend Indian Reservation.

Section 4(b) would reserve in the tribe the right to hunt, fish, and gather on the 9,880 acres which may be assigned to the United States.

Section 5(a) would provide that Section 4 receipts would be invested in interest-bearing deposits and securities until expended for the benefit of the San Lucy District.

Section 5(b) would authorize the tribe to purchase fee lands, not to exceed 9,880 acres.

Section 5(c) would authorize the Secretary to hold Section 5(b) lands in trust for the use and benefit of the tribe and such lands would be regarded as part of a Federal Indian reservation, provided that the lands are (1) acquired within Maricopa, Pinal, or Pima Counties, Arizona, and not within the corporate limits of any city or town, and (2) contained in not more than three separate areas of contiguous tracts. Also, one of the areas would be required to be contiguous with San Lucy Village unless the Secretary of the Interior waives the requirement.

Section 5(d) would require the Secretary to develop and establish a water management plan for lands which may be acquired and subsequently held in trust pursuant to Section 5(c).

Section 6(a) would require the Secretary to make payments in lieu of real property taxes for all fee lands acquired by the tribe and held in trust by the Secretary.

Section 6(b) would authorize the Secretary to enter into agreements with the State of Arizona and local governments to satisfy the obligation which would be created under Section 6(a) by transferring public lands to such governments.

Section 7 would require the Secretary to deliver, at no cost to the United States, any water acquired by the tribe by purchase, rental, or exchange via

CAP works to any lands acquired by the tribe and held in trust, provided canal capacity is present in the existing system. Water delivery is at the same rate as that charged by the Central Arizona Water Conservation District.

Section 8(a) would require the Secretary to carry out the foregoing provisions only if within one year of enactment, the tribe executes a waiver and release of all of its claims against the United States for injuries to land and water rights (including rights to both surface and ground water) with respect to the lands of the Gila Bend Indian Reservation.

Section 8(c) makes a tribal waiver contingent upon receipt in full of all payments to be made to the tribe.

Section 9 would require that the Secretary, in consultation with the Director of the Indian Health Service, design, construct, operate, maintain and replace domestic water and sanitation facilities to service the 40 acre Village of San Lucy, plus its contemplated additions. We estimate the cost to be $537,000.

S. 2106 (Chuichu):

Section 4(a) would require that the Secretary of the Interior offer to contract with the tribe for an additional 12,000 acre-feet of water annually which, in years of water supply shortages experienced by the Central Arizona Project (CAP), would have the priority of non-Indian agricultural uses, a lower priority than Indian agricultural water. The 12,000 acre-feet would be in addition to the 8,000 acre-feet of Indian agricultural water which the Secretary is obligated to deliver from CAP to the Chuichu area pursuant to a December 11, 1980, contract with the tribe.

Section 4(b) would require the Secretary to deliver both quantities of CAP water (12,000 and 8,000 acre-feet) at no cost to the tribe.

Section 4(c) provides that any water acquired by the tribe to mitigate possible shortages in CAP supplies would be delivered through CAP facilities. The delivery cost of this non-project water would be at the CAP rate and paid by the tribe.

Section 4(d) would require replacement of domestic water facilities for three small villages in the Chuichu area. The existing domestic wells - - like the irrigation wells - - are not currently serviceable because of the precipitous drop in the underground water level due to off-reservation pumping.

Section 5(a) would provide, at no cost to the tribe, design and construction of a complete on-farm irrigation system and land subjugation for lands to be served by both the 12,000 acre-feet proposed for contract and 8,000 acre-feet under contract. The total estimated cost of this on-farm development is $3,182,000 (comprised of $1,272,800 for the 8,000 acre-feet and $1,909,200 for the 12,000 acre-feet).

Section 5(b) provides that Section 5(a) development would be undertaken only if the tribe agrees to provide for proper operation, maintenance, and replacement (OM&R) of that development.

Section 6 provides that the tribe would have the right to devote water supplies made available under the bill to any use.

Section 8 provides that the Secretary's obligations would be conditioned on the execution within one year of enactment of a waiver and release by the tribe of all claims for injuries to its water rights.

Section 9 would authorize a trust fund of $10 million, with interest, from date of enactment of S. 2106 to enable the tribe to develop water resources, to acquire water rights, for economic and community development, etc.

S. 2107 (Tat Momolikot):

Section 4(a)(1) would require the Secretary to construct the remainder of the Vaiva Vo Irrigation Project and provide 7,720 acre-feet of water, at no cost to the tribe, within 3 years of enactment.

Section 4(a)(2) would require the Secretary to operate, maintain and replace that portion of the Vaiva Vo irrigation project which already exists, at no cost to the tribe.

Section 4(a)(3) would require the Secretary to construct fencing and cattleguards to protect livestock in the immediate vicinity of Tat Momolikot Dam.

Section 4(a)(4) would require the Secretary to determine witnin 3 years what dam safety measures, if any, need to be undertaken to protect life and property in the vicinity of the dam.

Section 5(a) would provide for the payment of $3.1 million to the tribe if the tribe agrees to waive and release claims maintained by the tribe which have arisen from the construction of Tat Momolikot Dam and Reservoir. $3 million of which would be paid to the tribe and $100,000 would be made available to relocated persons through the tribe. The $3.1 million would accrue interest at Treasury rates from the date of enactment until payment is made to the tribe.

Section 6(a)(1) reiterates the Section 5(a) waiver provision and would require that the Secretary carry out his obligations within one year of enactment.

Section 6(a)(2) provides for the granting of appropriate rights for Tat Momolikot Dam and Reservoir to the United States.

Section 6(b) reiterates the provision that a tribal waiver and release will not take effect until such time as the Secretary completes the Vaiva Vo Irrigation Project and pays the aforementioned $3.1 million to the tribe.

The Department's Position:

Both S. 2105 (Gila Bend) and S. 2106 (Chuichu) assume Federal liability for various water problems at the respective reservations. At this time we do not think that Federal liability has been established.

Detailed hydrulogic and soils studies have not yet been scheduled for either Chuichu or the Gila Bend areas to support water claims made by the United States on behalf of the tribe. I am informed that such studies will not be completed before late 1989.

Accordingly, it is much too early for the Department to support legislation which assumes that water rights in the tribe for the Chuichu and Gila Bend areas can be precisely specified at this time. With respect to Chuichu, it is much too early for the Department to support legislation which would develop an as-of-yet unsubstantiated right.

As the Committee is aware, the Under Secretary of the Interior formed a Departmental Working Group on Water Policy in 1984 to address a number of multi-bureau issues relating to water supply and water quality. That group

is a senior forum for developing the Department's policies on a wide range of water issues, including Indian water claims settlements. As a member of that Working Group, I can assure you that the issue of Chuichu water rights can be placed in the Departmental process and that upon consideration of all of the data pertinent to the tribe's claim, a Departmental position may be developed which would be acceptable to the tribe and to the Department of the Interior.

As mentioned previously, adjudication of water rights is necessary to determine the validity of a Winters rights claim. This may not happen in the near future. In the meantime, it is our hope that the tribe's willingness to develop a settlement addressing its potential water rights at Chuichu would transcend our differences with respect to their claim at this time and that the tribe would be willing to participate in our Departmental process.

Let me explain how the Department would approach a settlement of the tribe's water rights through the Working Group.

Departmental staff would assemble information on the claim, outline key issues involved, and identify the likely parameters of a settlement. The Working Group would then determine whether the claims were promising and whether the claims could be settled within the Department's funding target. Criteria considered in determining whether the claim would be negotiated would include:

-- whether resolution of the claims would result in significant development by the tribe;

-- whether it is likely that a settlement can be achieved which is cost-effective;

-- whether a potential settlement would offer a high level of benefits to the tribe relative to the costs involved;

-- whether sufficient information is available to permit meaningful negotiations;

-- whether key parties are willing to negotiate; have realistic expectations; and whether a satisfactory settlement seems likely;

-- whether State and local entities are committed to meaningful cost-sharing;

-- whether potential precedents which may be established would be desirable;

-- whether a negotiated settlement would be preferable to litigation of the claim and whether the anticipated settlement would avoid new claims against the Department; and

-- whether a negotiated settlement would be equitable.

With regard to the proposed Tat Momolikot Dam settlement in S. 2107, we are prepared to acknowledge that anticipated benefits associated with the tribe's donation of some 5,324 acres of land for the Tat Momolikot Dam site have not been realized.

As authorized by the Flood Control Act of 1965 (P.L. 89-298, 79 Stat. 1083), the project planned jointly by the Corps of Engineers and BIA, included the subject dam and St. Clair Reservoir on the Papago Reservation. Authorized project purposes included flood control, water conservation, fish and wildlife, and the construction of recreation facilities. The BIA was responsible for carrying out The Vaiva Vo Irrigation Project which was designed to implement the project's water conservation objectives.

On May 4, 1962, the Papago Tribal Council passed Resolution No. 1239 approving the project for certain valuable consideration; i.e. "advantages that will accrue to the Sif Oidak District and the Papago Indian Reservation from the construction of a multiple-purpose dam and reservoir on Santa Rosa Wash about 6 1/2 miles upstream from Vaiva Vo, Arizona, for water conservation, fish and wildlife, recreation and flood control...".

The tribe's expectations of benefits were reinforced in a May 25, 1965, report from the Corps of Engineers to the Congress. The report stated, in pertinent point:

> "Economies accrue to flood control, irrigation, fish, wildlife, recreation, and area redevelopment interests by combining features under a multiple-purpose plan, as considered in this report, rather than construction of a single feature."

Especially with respect to the accrued benefit of water conservation to irrigation, estimates were made by the Bureau of Indian Affairs (BIA) which indicated that operation of Tat Momolikot Dam and Reservoir would develop an annual safe yield of 4,760 acre-feet for irrigation and fish ponds (3,620 acre-feet), and water for injection into underground storage (1,140 acre-feet). Also, the BIA indicated that the Vaiva Vo Irrigation Project area would consist of 1,640 acres, the largest portion of which would be Class 1 lands (1,274 acres).

Taking into consideration the water requirements for the fish ponds, less than 2.9 acre-feet per acre was anticipated to be available for irrigation. Therefore, a water conservation pool alone would not have satisfied the development needs of the Vaiva Vo Irrigation Project. In support of this conclusion, the same report stated that the BIA would have to develop

thirteen wells to supplement the surface water "when the reservoir was empty."

In 1972, the tribe granted a right of entry to the Corps for construction of the dam and reservoir and the project was completed in 1974. Management of the dam has been the responsibility of the BIA since that time.

In accordance with the project document, the tribe was to donate 5,328.78 acres of reservation lands for the construction of the dam, that is, those lands required by the dam site and the conservation pool. The Tribe was to be paid for the flowage easement required for the flood control portion of the project. In 1975 by tribal resolution, the tribe agreed to provide a flowage easement of 9,080.92 acres for $340,750 and compensation in the amount of $8,465 for displaced Tat Momoli Village residents who were then residing in the floodplain.

In April of 1974 the Corps sought conveyance of the flowage easement at the agreed value of $349,750, which included the $8,465 as compensation for the abandonment of Tat Momoli Village.

In 1975, the tribe, by council resolution, agreed to accept the above-stated amount. However, when the Corps attempted to close the real estate transaction, the tribe refused to convey the real estate interest required for the project on the basis that the project did not provide the benefits that the tribe had anticipated. Rather, the tribe wanted to be paid for both the donated and the purchased land. Although the Corps had made several attempts to pay for the purchased lands, it has maintained that it did not have authority to pay for the donated lands.

We are prepared to acknowledge that the tribe has suffered certain inequities based upon the facts recited above. However, the Department is of the

position that it would be in the best interest of the tribe and the United States if the tribe would agree to forego further development of the Naha Irrigation project in return for a cash settlement encompassing the value of the land required for the dam project (limited to the dam site and flowage easement land), plus interest. In our estimation, it is obvious that Kahoolawe Dam and its reservoir will never provide a dependable water supply for irrigation. Despite some recharge from the reservoir, any remaining prospects for a successful operation of a full-scale agricultural enterprise at Naha Ka are already compromised by a depleting groundwater supply.

Accordingly, we propose the following remedy:

(1) Payment to the tribe of the Corps of Engineers' appraised value of the 6,160.80 acres acquired for the flowage easement and the value of Kahoolawe village improvements ($346,250) plus interest during the period of 1971-1986.

(2) Payment to the tribe of the 1974 BIA appraised value of $750 per acre for 5,323.78 acres acquired for the dam site, plus an interest during the period of 1971-1986.

The determination of the appropriate interest rate could be based on a number of factors, including the 6% rate in the Declaration of Taking Act (40 U.S.C. 258a). However, we have no objection to the rate being determined by the Secretary of the Treasury as provided in the bill.

With this settlement, we believe equity will be done. Since we regard this proposed remedy as full satisfaction for the tribe's claim, S. 2127 should be amended to require the tribe to waive its claims against the United States and confirm good title in the United States to the above-recited acreages upon acceptance of payments in the above-stated amounts.

In addition, if our alternative is accepted, S. 2107 should be amended to provide that the tribe accepts responsibility for any individual claims arising from relocation from the above acreages; and that the United States is held harmless for any such claims.

This concludes my prepared statement. I would be pleased to answer any questions the Committee may have.

PREPARED STATEMENT OF GARY HARTZ, DIRECTOR, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I am Gary Hartz, Director of the Division of Environmental Health of the Indian Health Service (IHS). I appreciate this opportunity to testify on S.2105, and S.2106, which provide for settlement of certain water rights claims of the Papago tribe of Arizona.

IHS is the Federal agency charged with administering the principal health program for American Indians and Alaska Natives. At present, the IHS provides comprehensive health services to approximately 987,000 Indians and Alaska Native people. The goal of the IHS is to raise the health status of American Indian and Alaska Native people to the highest possible level. Its mission is threefold: 1) to provide or assure the availability of high quality comprehensive, accessible health services; 2) to provide increasing opportunities for Indians to manage and operate their own health programs; and 3) to serve as a health advocate for Indian people.

The Department of HHS, through IHS, is responsible for implementing Public Law 86-121, which authorizes the provision of essential sanitation facilities for American Indians and Alaska Natives. Over 80 percent of all Indian and Alaska Native homes now have sanitation facilities and safe water. IHS will continue to work with other Federal agencies and tribes to promote sanitation improvements and the availability of safe water in Indian communities.

In summary, we defer to the Department of the Interior (DOI) concerning the main issues addressed in both bills. We wish to comment, however, on the language in S.2105 and S.2106 requiring the Director of the IHS to join DOI in the operation and maintenance of certain water facilities.

S.2105 and S.2106 would require the Secretary of the Interior, in consultation with the Director of IHS, to plan, design, construct, operate, maintain and replace certain domestic sanitation (water and wastewater) facilities. Technically, these provisions would authorize appropriations to DOI, but it is our understanding that Committee staff intend for the Secretary of the Interior to receive the funds and to enter into a Memorandum of Agreement with the Department of HHS to transfer the funds to IHS to carry out these provisions.

t appears that one intent of both S.2105 and S.2106 is to have the Federal Government operate and maintain the newly provided water and wastewater systems as well as design and construct such facilities. The Department opposes language that could set a precedent for IHS operation of tribal water or sewer systems. IHS has neither the authority, nor the resources, for providing sustained operation and maintenance support to tribal sanitation organizations. Fostering interest in local control and instilling a sense of responsibility among tribes and Indian communities which operate and maintain their water and waste systems have been two of the major strengths of the IHS Sanitation Facilities Construction Program. IHS has been very successful, in assisting tribal efforts to develop the competence necessary to operate and

maintain sanitation facilities. The percentage of tribal systems operated and managed by Indians possessing an acceptable level of competence compares very favorably with rural systems serving the general population. Requiring IHS to operate and maintain systems on the Papago Reservation would work as a disincentive to other tribes presently doing a responsible job.

Currently, the Chuichu water system is operated and maintained by the Papago Tribal Utility Authority. The San Lucy water system is operated and maintained by the City of Gila Bend Water Department. Both utility organizations do an excellent job of operating and maintaining their respective facilities.

In summary, we believe that a Federal operational role would be counter to current program policy and, in our view, the change would not be advantageous to the Federal Government or the Tribe. We defer to the DOI testimony as to the overall merits of the bills.

Mr. Chairman, that concludes my opening remarks. At this time I will be happy to answer any questions the Committee may have.

PREPARED STATEMENT OF JOSIAH MOORE, CHAIRMAN
TOHONO O'ODHAM NATION

Mr. Chairman, we appreciate this opportunity to testify in support of the three bills you and Congressman McCain have sponsored to settle certain claims, of the Tohono O'odham Nation against the United States. Those claims relate to the Chuichu area of the Sells Reservation, the Gila Bend Reservation, and Tat Momolikot Dam on Santa Rosa Wash, which is located in the Sells Reservation.

The settlements embodied in the proposed legislation are the result of more than a decade of thought and work and discussions among the O'odham people and with Federal and State officials, members of Congress, and Congressional staff. The bills seek to resolve fairly and reasonably recent O'odham claims and those that have gone unsettled for many years.

Our testimony presents information regarding the circumstances which give rise to O'odham claims, the calculations made in determining proposed claim values, and alternative remedies which were considered by the tribe. On May 3, 1986, we presented this information to the Department of the Interior. Most of the testimony is based on information we obtained from the files of the Bureau of Indian Affairs.

S.2106 (H.R.4215) CHUICHU SETTLEMENT:

1. When the 19,000-acre Chui Chuischu Reservation (now incorporated into the Sells Reservation) was established in 1912, there was a dependable water supply of not less than 20,000 acre-feet of surface and underground flow of the Santa Cruz River available for farming in the Chuichu area.(a) In addition, there were at that time approximately 1,200,000 acre-feet of water in storage underlying the Chuichu lands.(b)

Recognizing O'odham rights in the Santa Cruz River, the United States, on June 8, 1912, filed a Notice of Water Appropriation(c) for 60,000 acre-feet to assert those rights and the rights of two tribes located downstream--the Papagos of the Maricopa Reservation (Ak-Chin) and the Pimas of the Gila River Reservation.

The Department of the Interior has also acknowledged O'odham rights to the water in storage.(d)

The United States has known since 1912 of potential and actual injuries to the Chuichu water supply.(e)

Owing to decades of off-reservation agricultural, municipal, and industrial development, and mining, extending from south of Tucson north to the Gila River, the waters of the Santa Cruz, except at times of extreme flood, have ceased to flow through the Chuichu area and, therefore, are no longer available for farming.(f) In addition, irrigation districts north of the reservation boundary have mined the tribe's water in storage to such an extent that farming at Chuichu is no longer possible with groundwater.(g) Without water, the desert lands of Chuichu have little or no value.

For the last 74 years, the United States has taken no action to protect O'odham water rights in the Chuichu area. Its actions, instead, have been limited to the development of small irrigation projects. In 1949, the Secretary of the Interior approved a plan to develop an 11,000-acre Chuichu irrigation project.(h) This was to be the central feature of the Government's program to alleviate economic and social conditions which were regarded, at the time, as a national scandal. It was never completed and now cannot be.

The Old Chuichu project begun in 1915 and the East Chuichu project of the 1950s had to be abandoned owing to the Government's failure to protect the projects' water supply. In the Old Chuichu project, land under irrigation rose to 865 acres in 1920 and then declined sharply. The last farming occurred there in 1970. In the East Chuichu project, 1,200 acres were developed in the 1950s but much of this went out of production a short time later. Today none of the Chuichu land is farmed. During the forty-year period 1945-1985, non-Indian irrigators withdrew, on average, more than 1,000,000 acre-feet from the basin each year.(i)

In 1976, the Chuichu area was allocated 8,000 acre-feet of the Indian CAP allocation, or enough to irrigate 1,480 acres. The allocation was confirmed in 1980. Delivery of the CAP water from the Colorado River is expected in 1988-9. The Government intends to charge OM&R costs to deliver this water. This will reduce Chuichu farm profits by $362 per acre and impose on the tribe the unjust burden of paying the costs of replacing its local water supply. Anticipated farm profits after paying delivery costs will be substantially below those costs. Pumping under 1912 groundwater conditions, when depth to water was only 57-60 feet, would cost only $54 per acre today.

In 1980, recognizing that injuries had occurred and were continuing to occur, the Department of the Interior's field solicitor forwarded to the Office of the Solicitor a litigation

report recommending that the United States file suit to enjoin off-reservation pumpers and seek money damages. The report was accompanied by a draft complaint. No action has been taken.

The United States, by recent actions and actions over many years, has encouraged injuries to the Chuichu water supply by granting no-interest small reclamation loans to irrigators who have dewatered the Chuichu area and by providing low-cost, preference-rate Federal power to them.

2. The claims values of the proposed Chuichu settlement are as follows:

| | |
|---|---|
| Irrigation | |
| Clearing and leveling (3,704 ac. X $500 per ac.) | $1,852,000[a] |
| Distribution systems (2,222 ac. X 2,160 per ac.) | 4,800,000[b] |
| Laterals, sublaterals, field ditches (3,704 ac. X 360 per ac.) | 1,333,400[c] |
| Grant | 10,000,000 |
| Domestic water supplies | 120,000[d] |
| OM&R (20,000 af X $67 per af) annual | 1,340,000[e] |

The calculations are based on an annual duty of water of 5.4 acre-feet per acre--a standard used by the Bureau of Reclamation in connection with CAP agricultural allocations.

The cost of constructing a system to distribute the tribe's 8,000 acre-feet Indian CAP allocation is reimbursable under the Colorado River Basin Project Act, but payment is deferred under the Leavitt Act. No costs covered by that Act are included in the cost of the settlement proposal.

It is fitting for the United States to pay OM&R costs to deliver imported water to replace local surface and ground water supplies and, thus, mitigate the impact of the Government's actions and failures to act.

3. The tribe has considered a number of alternatives for settlement of its claims. In legislation introduced in the 95th Congress, it proposed a settlement based on the development of 25,000 acres of land in the Chuichu area which would have been supplied with imported water. The capital costs for the Chuichu settlement provisions were $65,100,000 (1976 prices). This proposal depended on the retirement of lands in the Wellton-Mohawk division of the Gila reclamation project and diversion of more than 140,000 acre-feet of the division's water supply from the Colorado River, through the CAP system, to the reservation. The avoided costs resulting from a reduction in the capacity required for the Yuma desalting plant would have offset the costs

of the tribe's proposal. The proposal was abandoned owing to the Department's opposition. Subsequent efforts to revive the proposal have met with the same opposition.

The present settlement proposal represents what the tribe considers to be the salvage value of its claims for water. All recent alternatives which it has considered are based on delivery of 20,000 acre-feet.

As the least-cost alternative for water acquisition, the tribe informally proposed renewing its request (rejected by the Department in 1976 and 1980) for an increase in the Indian CAP allocation--in the present case, an increase of 12,000 acre-feet. The Department and the State opposed this alternative.

To facilitate, but not to effect, settlement, the tribe, in 1981, formally applied to the Department and State for 12,000 acre-feet of the so-called "non-Indian" allocation of CAP water for agricultural uses. This application is pending. The Bureau of Reclamation has sized the Chuichu turnout on the Santa Rosa canal to accommodate both the 8,000 acre-feet Indian CAP allocation and the 12,000 acre-feet non-Indian allocation requested by the tribe.

In legislation introduced in the 98th Congress, the tribe proposed that the Secretary acquire and deliver an amount of water which, when added to the amount of water delivered under the tribe's 8,000 acre-feet Indian allocation, would have provided a firm water supply of 20,000 acre-feet. The legislation provided that the Secretary would pay damages in the event he failed to deliver this amount. To provide a means of firming up the supply and reducing the costs of acquiring and delivering a firm water supply, the tribe, at the suggestion of BIA, proposed that Congress authorize construction of a multiple-purpose dam at the Silver Reef damsite in the Sif Oidak district. The BIA estimated the cost to construct the dam to be $28,350,000.(a)

Subsequently the tribe met with the Commissioner of Reclamation and then with local flood control districts and received assurances of interest in the proposal. The districts expressed a willingness to consider helping the tribe defray the costs of a feasibility study. Before deciding to conduct the study, the tribe, at its own expense, conducted a reconnaissance of the site and concluded that the proposal did not merit a full-scale feasibility study.(b)

The tribe also considered a settlement modelled on the Southern Arizona Water Rights Settlement Act of 1982. It rejected this approach because: a nearby dependable source of water could not be identified; there is no appreciable quantity

of effluent which could be transferred by a nearby municipality to the Secretary for exchange; there is widespread opposition to acquisition by the United States of a permanent water supply from the Colorado River; and the Administration is reluctant to support settlements which entail extensive contingent liabilities for damages.

The tribe recently has been asked by Federal officials whether or not there are on-reservation agricultural water supplies that could be imported to the Chuichu area at reasonable cost. There are not. Furthermore, the tribe would not consider it reasonable to be required to furnish the water with which the United States settles the tribe's water rights. This would simply result in dewatering one part of the reservation to replace the water mined by non-Indians from under another part.

Accordingly, the tribe proposes that its claim be met by an allocation of 12,000 acre-feet of non-Indian CAP agricultural water and, in lieu of a firm water supply, a $10,000,000 trust fund to enable it, at its discretion, to firm up its CAP supply and help defray the OM&R costs to deliver any supplemental water supply which it might purchase.

The provision requiring the Secretary to construct, operate and maintain domestic water facilities to serve the villages of Chuichu, East Chuichu, and White Horse Pass is a new proposal. Off-reservation pumping has so depleted the area that domestic wells are running dry. Since CAP water is not potable and the cost of treating it on so small a scale is likely to be prohibitive, it may be necessary to import groundwater from lands located some distance from the villages. There appear to be no alternatives. Unless domestic water is made available, the villages will have to be abandoned, at great cost and suffering.

In considering alternatives to the Chuichu settlement, the tribe considered the value of its equitable claims against the United States for damages. This value is not less than $100,000,000.[c]

The tribe has considered the question of cost-sharing by individual irrigators who have dewatered the Chuichu area. It notes that the Administration did not require such cost-sharing in negotiations that led to enactment of the Southern Arizona Water Rights Settlement Act. In that Act, reclaimed water, which the United States would acquire from the city of Tucson, was considered an indirect contribution by irrigators along the Santa Cruz downstream from the Pima county sewage treatment plant, who would otherwise have its use at little or no cost. In the present settlement, the allocation of non-Indian CAP water to the tribe for agricultural use may be viewed as a similar indirect contribution.

As a more direct approach to cost-sharing, the tribe may propose an amendment to S.2106 (H.R.4215) to require it to assign its damage claims against third parties to the United States. This would afford the United States an opportunity to recover the entire cost of the proposed settlement, should it elect to pursue this course in its own interest.

S.2105 (H.R.4216) GILA BEND SETTLEMENT:

1. On January 3, 1961, the United States filed in Federal district court a declaration of taking for a flowage easement in lands of the Gila Bend Reservation (Civ. 3504 Phx). The easement was taken in connection with the construction of Painted Rock Dam approximately 10 miles downstream. The easement prohibits structures for human habitation below the 660-foot elevation. On November 10, 1964, the court granted a flowage easement in 7,724 acres of land. Compensation in the amount of $130,000 was paid to the Superintendent of the Sells Agency on behalf of the tribe. (The tribe has now asked for an accounting for these moneys.) No allowance was made for accrued interest.

The United States failed to consider the effects that construction of Painted Rock Dam would have on the Gila Bend Reservation.(a)

Recent operation of the dam by the Corps of Engineers is in conflict with the criteria specified in the Corps' project report which served as the basis for Congressional authorization of the dam.(b) It is also in conflict with the operating criteria specified in the Corps' 1962 manual for the dam, published during the pendancy of the condemnation proceeding.

Since 1978, the reservation has been subject to frequent inundations, and the flood waters have not receded from the land for many months following each inundation.(c) The Bureau of Indian Affairs attributes the frequency and duration of the inundations to the change in the operating criteria. This change has caused water to back up from the dam for 16 miles. The last 6 miles of the lake that is created lie within the reservation. Under the original criteria, flood waters captured by the dam would have been released rapidly, and, except for extremely rare floods, would not have inundated reservation land. When the flood waters are standing on the reservation, no economic use of the land is possible.

In addition, the United States has failed to mitigate damages to the land by neglecting to remove promptly the early growth of saltcedar from seeds deposited by the flood waters. Today the land in the flowage easement is covered with a dense thicket of saltcedar. This makes economic use of land both within and without the flowage easement infeasible at times when the flood waters have receded from the reservation.

The BIA has determined that 5,962 acres of arable land have been rendered unsuitable for agriculture by reason of the operation of Painted Rock Dam.(d) At the same time, it found that approximately 4,300 acres of rangeland have been rendered of little or no economic value.(e)

In addition, the inundations destroyed a 750-acre farm which was developed at the tribe's expense.

2. The claim values of the proposed Gila Bend settlement are payment to the tribe of $30,000,000, if the tribe assigns to the United States all right, title, and interest in 9,880 acres of land within the Gila Bend Reservation; nominal in-lieu payments for state and local taxes; and $537,000 for water treatment and domestic water and sanitation facilities. The tribe will retain 417 acres of special-purpose lands, including: San Lucy village, a sanitary landfill, and cemetery sites.

3. The tribe, in 1956, rejected a proposal by the Corps of Engineers to exchange public lands of equal value, on an acre-for-acre basis, for reservation lands in which its flowage easement would be taken. In 1957, it rejected a proposal by the BIA to sell the reservation. It rejected these proposals on the express representations of Corps and BIA officials that flooding would occur so infrequently as not to impair its ability to farm the land within the flowage easement.(a)

In 1981, following repeated and prolonged inundations and their destructive effects on reservation land, the tribe petitioned Congress for a new reservation on lands in the public domain which are suitable for agriculture and of equal value.(b)

Section 308 of the Southern Arizona Water Rights Settlement Act of 1982 directs the Secretary, with the consent of the tribe, to exchange lands under his jurisdiction in the public domain, if his analysis discloses that reservation lands have been rendered unsuitable for agriculture by reason of the operation of Painted Rock Dam. (As its legislative history makes clear, section 308 was not intended to settle all of the tribe's claims respecting the Gila Band Reservation). The BIA found that 5,962 acres--all the reservation's arable land--had been rendered unsuitable for agriculture.(c)

The tribe, under a 638 contract with BIA, conducted a comprehensive study of BLM lands within a 100-mile radius of the Gila Bend Reservation. The draft 1986 report concludes that there are not 5,962 acres of BLM land which meet the equal-value test within that 63,000-square-mile area.(d)

In light of the 1983 BIA study, settlement legislation was proposed by the tribe and introduced in June 1984 which would have provided for the exchange of both agricultural and range land within the reservation for BLM Lands and private lands to be purchased by the Secretary. Congress took no action.

The known costs of the settlement were a grant of $8,000,000 and $5,000,000 for construction of an irrigation system to serve 2,000 acres of land.(e) The unknown costs were those for land and/or the water acquisition, construction of a water delivery system, and OM&R costs for the delivery system. These could not be known until land was identified for exchange with the tribe. Based on the findings of the tribe's 1986 study of BLM lands, the total cost of the proposal, owing to its water-related costs, would have greatly exceeded the claim values of the present one.(f)

The tribe's current legislative proposal seeks to reduce the Federal costs of settlement by eliminating the water acquisition, construction, and OM&R provisions of the 1984 legislation and the contingent liabilities of its damages provisions.

In its current proposal, the tribe tentatively eliminated the BLM land exchange provision of the 1984 legislation on finding early in its 638 study no suitable lands within a 50-mile radius of the reservation. Failure to find appropriate BLM lands within a 100-mile radius confirms it in this decision.

The tribe eliminated the provision authorizing the Secretary to purchase private lands to exchange for reservation lands in order to afford the tribe a greater degree of self-determination in land selection.

The basic differences between the present proposal and earlier ones is that S.2105 (H.R.4216) provides for a transfer of moneys to the tribe rather than a transfer of Federal land of equal value in exchange for reservation lands.

Knowing the Administration's aversion to legislation in which Federal costs are not specified, the tribe, in its current proposal, has stipulated the major part of the costs of settlement.

Among several other alternatives, the tribe considered and rejected a settlement which would have: established, by statute, operating criteria for Painted Rock Dam identical to criteria specified in the Corps' original project report; directed the Secretary to rehabilitate the lands in the flowage easement; and required the United States to pay money damages to the tribe in connection with the unjust compensation paid for the flowage easement and for injuries to land and water arising from the operation of the dam. An estimate of the costs of rehabilitation is given in the 1983 BIA report.(g)

The tribe rejected this approach, in part because: it lacks any surface water for farming; the water table has fallen and is falling rapidly; groundwater quality is greatly deteriorated; and dewatering has compacted the land--owing to the failure of the United States to protect the tribe's water rights for the past 104 years. Compaction has reduced the water-carrying capacity of the land by as much as 58 percent, is irreversible, and constitutes a permanent injury to the land.(h)

The major component in the tribe's valuation of the Gila Bend Reservation is its Winters right to approximately 30,000 acre-feet of the surface and underground flow of the Gila River, with a priority date of 1882. As an alternative to the proposed assignment of its right to the United States, it could assert this right in the general stream adjudication of the Gila River. By assigning all right, title, and interest, the tribe abandons its claims for water and money damages against the United States for injuries arising from the deprivation of water and impairment of its right to use water owing to upstream irrigations and diversions and local groundwater depletion which have been financed, encouraged, or permitted by the Federal government. It estimates the equitable value of these claims to exceed $100,000,000.(i) It has chosen its present course because both the adjudication and suits for damages would be costly and take many years. The needs of the people of the San Lucy district are urgent.

To provide an alternative to exclusive reliance on the purchase of private lands, the tribe may propose an amendment to the Gila Bend settlement legislation which would authorize the Secretary to sell Federal lands within his jurisdiction to the tribe.

In addition, recognizing that BLM lands which proved unsuitable for the tribe in its 1986 study may possess values for the State or private interests, the tribe may propose an amendment authorizing the Secretary to sell some of these lands to others to offset the claim values of the proposed Gila Bend settlement.

The tribe is also considering alternatives to the construction of a water-treatment facility ($250,000) to reduce the costs of settlement. One alternative is bottled water. (Water treatment is made necessary because the tribal water is highly mineralized, owing to the failure of the United States to protect water quality from upstream degradation.)

B. Gift (S.B.423/H.R. 4217) for Makah Dam:

1. The United States has constructed Fat Mamaloosh Dam on Santa Rosa Wash in the Gila Bidah District of the Papia Reservation without furnishing certain irrigation, recreation, fish and wildlife, and area redevelopment benefits to the tribe which the tribe stipulated in 1982 as conditions for granting easements in 5,223.78 acres of land for the dam, its appurtenances, and reservoir.

The United States has refused to pay the tribe for a flowage easement in 8,080.92 acres of land, unless the tribe grants the appropriate rights for the dam, its appurtenances, and reservoir.

In turn, the tribe has refused to execute and deliver to the United States the easements it seeks.

Completed by the Corps of Engineers in 1979, Fat Mamaloosh Dam is part of the Santa Rosa Wash project, which was authorized by Congress in the Flood Control Act of 1965. The Corps' project report which served as the basis for Congressional authorization indicates the project was to consist of: (1) a multiple-purpose dam, Fat Mamaloosh Dam; (2) a water-conservation reservoir, Lake St. Clair; and (3) a 1,440-acre irrigation project, the Tribe Ka project.[a]

The authorizing legislation required assurances of local cooperation. If satisfactory assurances were not given to the Secretary of the Army within five years after the authorization of the project, the authorization would expire.

The tribe had already, in 1965, given the assurances. This assurance, however, was subject to certain terms and conditions. On May 4 of that year, the tribe, by Council resolution, agreed to the proposed construction of the dam --

> Recognizing the advantages that will accrue to the Gil Gidah District and the Papago Indians Reservation from the construction of a multiple-purpose dam and reservoir on Santa Rosa Wash about 4-1/2 miles upstream from Yuma, Arizona, for water conservation, fish and wildlife, recreation and flood control....

After referring to these expected benefits, the resolution states --

> The Papago Indian Tribal Council agrees to make available to the United States (1) appropriate rights to those lands required for construction of the dam and appurtenances, and (2) appropriate rights to those lands that would be required for the construction of a water-conservation reservoir.

It expressly conditioned the tribe's approval of the project and its grant of appropriate rights for the dam and reservoir --

> The Council, however, understands and expects that a fair and equitable settlement will be made to the Papago Indian Tribe for the use of additional lands required to provide flood-control facilities...
>
> We also understand that fair market value will be paid to the owners for all residences and improvements, including the village of Tat Momolikot...(b)

The Corps of Engineers, with the approval of the Office of Management and Budget, filed its report with Congress on May 25, 1965, recommending construction of a multi-purpose dam on Santa Rosa Wash at a point 6.5 miles upstream from Vaiva Vo village.(c) In its report, the Corps represented that --

> Economies accrue to flood control, irrigation, fish, wildlife, recreation, and area redevelopment interests by combining features under a multi-purpose plan...rather than construction of a single [flood control] feature.

The report recognizes that no flood control benefits would accrue to the tribe. It states --

> The area subject to damage comprises the highly developed agricultural lands north of the Papago Indian Reservation.

The report indicates the following average annual benefits for those features of the project other than flood control:

| | |
|---|---|
| irrigation | $258,000 |
| recreation | 60,000 |
| fish and wildlife | 49,000 |
| area redevelopment | 11,000 |
| | $378,000 |

Adjusted for changes in the consumer price index, the present value of the average annual benefits would be substantially greater.

In 1971, the Corps, without the consent of the tribe, changed the site of the proposed dam to a location 2 miles closer to Vaiva Vo village and immediately adjacent to the Vaiva Vo project site.

The Corps represented that the new site would require donation by the tribe of 5,323.78 acres of land for the dam and reservoir and purchase by the Corps of a flowage easement for 9,080.92 acres. Upon completion of the dam, the Corps offered to pay the tribe $340,750 for the flowage easement. It also offered $8,465 as compensation for the abandonment of certain structures at Tat Momoli village which were located in the flood plain--6 houses, a church, a shed, and 3 corrals. Moreover, it required the tribe to donate appropriate rights for the dam, its appurtenances, and reservoir, for which the Corps did not offer compensation.

The tribe, by Council resolution dated July 22, 1975, agreed to accept payment for the flowage easement and, in exchange, grant the appropriate rights for it. The Council informed the Corps, however, that the tribe would donate the other appropriate rights only when the BIA had furnished the agreed-upon irrigation, fish and wildlife, recreation, and area redevelopment benefits, or ones comparable. The Corps refused this offer and refused to pay compensation for the flowage easement until the other appropriate rights were donated.

The Bureau of Indian Affairs has constructed only 500 acres of the 1,640-acre Vaiva Vo project. Another 200 acres had already been developed by the tribe prior to construction of the dam. No new construction has occurred for a number of years.

The existing irrigation works were poorly constructed and require costly maintenance by the tribe. Recently, the BIA allotted $30,000 for partial rehabilitation of the project. Additional corrective work is needed.

Since its construction, there have been no flood flows to store in the reservoir which could be used, as planned, to serve the Vaiva Vo project by low-cost gravity flow. This has imposed on the tribe unbargained for costs for pumping groundwater ($35 per acre-foot).

The minor flows that are retained by the dam are quickly evaporated, without offsetting water-conservation benefits. Moreover, much of the water lost to evaporation would have served to recharge the aquifer had the dam not been constructed.

In addition, these minor flows cause the reservoir area to turn into a sea of mud. This and the unfenced condition of the reservoir have resulted in reservation livestock losses, since the animals become enmired and die.

Since there is no appreciable amount of water in Lake St. Clair, construction of the agreed-upon recreation, fish and wildlife, recreation, and area redevelopment features has not occurred.

Finally, the Corps, in connection with construction of the dam, its appurtenances, and reservoir took 156 acres more than it represented that it would.

The Corps has, at least twice since 1975, requested the Secretary of the Interior, as trustee for the tribe, to execute and deliver all the appropriate rights, but this he has refused to do.

Having failed in its efforts to reach an agreement with the United States, the tribe notified Congress of its grievance at Senate hearings on the water rights of the five central Arizona tribes, held on October 23 and 24, 1975. It has, since that time, sought a legislative solution to this and other disputes with the United States relating to water.

2. The claim values of the proposed Tat Momolikot settlement are as follows:

Irrigation System:

| | |
|---|---|
| Land development (1,430 ac. X $2,100 per acre) | $3,003,000(a) |
| Water development (14 wells X $100,000 ea.) | 1,400,000(b) |
| Project rehabilitation (700 acres) | 175,000(c) |
| Fencing and cattleguards (reservoir area) | 150,000(d) |
| Grants | 3,100,000 |
| Dam safety study | 10,000(e) |
| OM&R(11,502 af X $35 per af) annual cost | 402,570(f) |

The claim values in the proposed legislation are predicated on the terms and conditions of the tribe's 1962 agreement to grant easements for the project.

For a flowage easement in 9,080.92 acres of land, the tribe expects to be paid for the land as it was appraised by the BIA in December 1971, adjusted to 1986.

For an easement in 5,323.78 acres of land for the dam, its appurtenances, and reservoir, the tribe expects: completion of the remaining 940 acres of the Vaiva Vo projects; correction of

construction deficiencies in the completed part of the project; compensation for farm benefits which the tribe lost, owing to the failure of the BIA to complete the project in a timely manner; and compensation for other agreed-upon benefits which cannot practicably be realized, owing to a lack of water in the reservoir.

For the benefit of the former residents of Tat Momoli village, the tribe seeks compensation based on approximately twice the amount offered in 1974, adjusted to 1986.

In addition, the tribe seeks compensation for: injuries to water, livestock losses, and 156 acres of land taken for the dam and reservoir in excess of 5,323.78 acres referred to above.

The settlement calls for the construction of an irrigation system to distribute 7,720 acre-feet of water--that is, 1,430 acres of land or 490 acres more than the acreage required to complete the original 1,640-acre project. The construction costs for this addition to the project ($1,529,000) are deducted from the cash compensation which the tribe would otherwise seek in a grant.

The tribe is now reconsidering the claim values of the Tat Momolikot settlement, in light of a question which has been raised recently regarding the impact that groundwater withdrawals for the Vaiva Vo irrigation project may have on the safety of the dam. It has informally notified the Department of the Interior of its concern and now formally notifies it.

The tribe will propose an amendment to the legislation to provide that no funds for irrigation construction may be expended until a study is conducted to determine the effects of groundwater pumping on the dam. In the event the study discloses significant risk, the amount of the grant to the tribe would be increased by an amount equal to the avoided irrigation construction and OM&R costs.

The proposed settlement treats the irrigation system already constructed by the BIA as partial compensation for an easement for the dam and reservoir. The settlement proposed in S.2106 (H.R.4217) is in addition to the value of the existing system. If this system has to be abandoned, the tribe would then seek additional cash compensation.

## CONCLUSION

We trust that the United States will examine not only the cost of the proposed settlements and its risk of liability, but also the benefits that will come to it through helping to restore economic independence to the O'odham people. The impact of the settlements on the tribal economy will be great and result in an increase in Federal tax collections and a decrease in Federal transfer payments to dependant O'odham individuals and families. More than 70 percent of our people are unemployed.

NOTES

S.2106 (H.R.4215) CHUICHU SETTLEMENT:

1. (a) W.S. Gookin & Associates 1979. A report on the hydrology of the Chuichu area for the Office of the Field Solicitor, Department of the Interior, Phoenix, Arizona.

   (b) Ibid.

   (c) Later in the year, the United States, for the benefit of the O'odham, filed a Notice of Water Appropriation for 10,000 acre-feet of the surface and underground flow of Santa Rosa Wash, a tributary of the Santa Cruz.

   (d) For example, Office of the Field Solicitor 1980. A memorandum to the Associate Solicitor.

   (e) For example:

   Departmental correspondence relating to its decision to file the 1912 Notice of Water Appropriation.

   Turner, S.F, et.al., 1943, Ground-Water Resources of the Santa Cruz Basin, Arizona: U.S. Geological Survey.

   Yost, C.B., 1953, Geophysical and Geological Reconnaisance to Determine Groundwater Resources of the Chuichu Area, Papago Indian Reservation: U.S. Geological Survey.

   Committee on Interior and Insular Affairs, United States Senate, 1975. Hearings on the water rights of the five central Arizona tribes.

   There are numerous other studies and reports relating to this subject.

   (f) Same as (d).

   (g) Ibid.

   (h) Bureau of Indian Affairs 1949. The Papago Development Program. A report approved by J.A. Krug, Secretary of the Interior.

(i) Gookin 1979.

2. (a) Adapted from estimates used by Franzoy-Corey Engineers and Architects for the Ak-Chin Indian Community's small reclamation loans, adjusted for 1986 prices.

(b) Bureau of Reclamation. Based on costs (1985 prices) for a system to distribute the tribe's 8,000 acre-foot Indian CAP allocation:

(c) Ibid.

(d) Indian Health Service 1986.

(e) Bureau of Reclamation 1986.

3. (a) Bureau of Indian Affairs, Sells Agency, 1984.

(b) Result of findings by Franzoy-Corey Engineers and Architects.

(c) There are a number of ways damages, past and future, may be calculated. The per-acre annual benefits (1962 prices) projected by the BIA for the Vaiva Vo project (House Document No. 189, 89th Congress, 1st Session) is $157.32. We apply this annual benefit to the proposed 11,000-acre Chuichu farm, approved by the Secretary of the Interior, for the period 1960-1986 and assume annual farm income is reinvested at the rate of 10 percent per year compounded annually.

Annual payments $1,731,070
Number of years (1960-1986) 26
Interest rate 10% compounded annually
Future value (1986) $189,001,279

(This calculation does not give effect to: injuries prior to 1960, the lower OM&R costs that would have obtained owing to the relatively shallow depth to water at Chuichu, savings resulting from economies of scale, and other factors -- all of which would result in increased damages for injuries to the Chuichu water supply.

For future damages, we assume average annual farm profits to be $250 per acre (1986 prices) and capitalize these at 7.5 percent.

$250 x 11,000 ac / .075 = $36,666,667.

Values may also be suggested by recent sales. In 1985, the city of Mesa purchased 12,000 acres of agricultural lands south of Coolidge for $2,500-2,700 per acre.

$2,600 x 11,000 = $28,600,000.

In 1986, the asking price in North Florence areas is $4,200 per acre.

$4,200 x 11,000 ac = $46,200,000.

These calculations are for illustrative purposes only and are not to be construed as a limit to the damages which the tribe may claim.

S.2105 (H.R.4216) GILA BEND SETTLEMENT:

1. (a) Nowhere in the project report which was submitted to Congress on September 16, 1949, and served as the basis for Congressional authorization for Painted Rock Dam, did the United States expressly disclose any prospective impacts on the Gila Bend Reservation (House Document 331, 81st Congress, 1st Session). The Secretary of the Interior on May 23, 1949, approved the development of a 1,200-acre irrigation project on the reservation. In his letter to the Chief of Engineers dated August 3, 1949, he stated that he had no objection to construction of the dam.

   (b) House Document 331, 81st Congress, 1st Session.

   (c) Bureau of Indian Affairs 1983, Status of Lands Gila Bend Reservation.

   (d) Ibid.

   (e) Ibid.

2. (a) Bureau of Indian Affairs 1956: minutes of a meeting with representatives of the Corps and the San Lucy district on March 25, 1956. Bureau of Indian Affairs 1957: report of a field trip to the Gila Bend Reservation filed October 24, 1957.

(b) Committee on Interior and Insular Affairs, United States House of Representatives, 1981. Hearings on H.R.5118.

(c) Bureau of Indian Affairs 1983, Status of Lands Gila Bend Reservation.

(d) The 1986 draft Gila Bend Reservation Federal Land Exchange Study was prepared by Franzoy-Corey Engineers and Architects.

(e) H.R.5968.

(f) The 1986 study makes it apparent that the Secretary would have had to rely primarily on acquisition of private lands with a firm water supply for exchange with the tribe. The estimated cost of such acquisition is $25,000,000-35,000,000 (1986 prices). The cost of constructing an irrigation delivery system to convey water to BLM lands would have exceeded the cost of land acquisition.

(g) The cost of land leveling has increased substantially since 1983. We estimate this cost in 1986 to be more than $8,000,000.

(h) Field Solicitor, Department of the Interior, Phoenix, Arizona, 1980; Bureau of Indian Affairs 1976, in a report on S.905.

(i) For damages from 1960, our calculations are as follows:

Annual payments ($157.32 x 5,962 ac) $937,942
Number of years (1960-1986) 26
Interest rate 10 compounded annually
Future value (1986) $102,406,113

For future damages, our calculations are as follows:

$250 x 5,962 ac / .075 = $19,873,333
$300 x 5,962 ac / .075 = $23,848,000
$500 per ac x 3,918 ac (range) = $1,959,000

Land in the Gila Bend area with a surface water right recently was appraised at $4,500 per acre.

$4,500 x 5,962 = $26,829,000

S.2107 (H.R.4217) Tat Momolikot Dam:

1. (a) House Document No. 189, 89th Congress, 1st Session.

   (b) Resolution No. 1239, adopted on May 4, 1962.

   (c) Same as (a).

2. (a) Bureau of Reclamation (1985 prices).

   (b) Vaiva Vo farm manager (1986 prices).

   (c) Same as (b).

   (d) Bureau of Indian Affairs (1986 prices).

   (e) Pro forma.

   (f) Same as (b).